carefully explain that the service is expected to be purchased by end-users such as ISPs and the customer end-user.

31 A Section 3(25) LATA "modification" is not an appropriate vehicle for permitting premature RBOC entry into the interLATA marketplace.

13. COMPETITIVE TELECOMMUNICATIONS ASSOCIATION ("COMPTEL")

1-4 The FCC should proceed with the framework of the Federal Telecommunications Act ("FTA") and adopt national unbundled network element and collocation standards, reflecting state decisions, and adopt the NPRM's proposals that these standards apply to advanced services. At the same time, the FCC should avoid the NPRM's proposal to relieve an ILEC advanced services affiliate of interconnection and unbundling requirements. Premature deregulation of ILEC advanced services will undermine the overall goal of the FTA of breaking down ILEC monopoly networks.

4-5 The FTA appropriately balances ILEC incentives and obligations regarding advanced services. The proposal to relieve ILECs of the FTA's obligations if they offer "advanced services", albeit through a "separate" affiliate, threatens to disturb the FTA's balance. Given that advanced services will, in reality, be deeply intertwined with existing ILEC telecommunications services, an ILEC will have a great incentive to avoid regulation by classifying UNEs, services or network facilities as part of an "advanced service" offering of its deregulated affiliate when in fact these offerings should be subject to the FTA's interconnection and resale requirements. ILECs are already playing such games, as discussed in CompTel's petition in CC Docket No. 98-39, by creating ostensibly "competitive" local exchange carriers in their home regions for the tacit purpose of avoiding their legal obligations under the FTA.

6-9 It is not safe to assume that an ILEC will comply with the statutory requirement to provide UNEs on a nondiscriminatory basis to its advanced services affiliate and unaffiliated CLECs. There are many ways that an ILEC could unfairly favor its advanced services affiliate while remaining nominally in compliance with Section 251. For example, an ILEC could provision all of its physical collocation space to its advanced services affiliate to consume all collocation space to the exclusion of competitors, or lock up UNE capacity for its advanced services affiliate to exclude others, without violating the letter of Section 251. Even without intentional favoritism, an ILEC's advanced services affiliate will tax already scarce central office resources to the detriment of competitors seeking access. The potential discriminatory threats underscore the need to rely on the incentives and obligations already established by the FTA. As with Section 271 interLATA entry preconditions, relaxation of regulation of ILEC advanced services should occur only if and *after* the ILEC has complied with its Section 251 obligations.

9-14 An ILEC cannot legally be freed of Section 251's obligations by creating an affiliate. As defined by the statute, a successor or assign of the ILEC is subject to Section

251's obligations like its ILEC parent. An advanced service affiliate of an ILEC that receives any benefit transferred from the ILEC is legally a "successor or assign" and thus must remain under Section 251. When an ILEC transfers specific network elements or any asset or service that benefits the business operations of the advanced service affiliate, the affiliate is an ILEC successor or assign. A broad interpretation of the term "successor or assign" is consistent with the FTA's goal of opening the ILEC monopoly network to competition.

15-19 The FCC should require an ILEC to submit and receive approval of a Section 251 compliance plan before it is authorized to offer advanced services through an affiliate. Prior certification of compliance is consistent with the FCC's existing approaches to allowing BOCs to enter competitive service markets such as its *Computer III* policy that the BOCs submit comparably efficient interconnection plans to monitor their compliance with open network architecture requirements applicable to BOC-provided enhanced services and the video dialtone policy that a BOC receive a 214 license before providing video dialtone service.

19-22 The Section 272 non-structural safeguards regime applicable to certain BOC-affiliated interLATA service offerings is not a good model for allowing ILEC entry into the advance services market. Section 272 safeguards are in addition to Section 271, which requires that a BOC will first have sufficiently demonstrated compliance with competitive checklist criteria by providing competitors with nondiscriminatory resale and interconnection to its monopoly network facilities. There is no similar Section 271 certification process suggested in the NPRM prior to allowing an ILEC to offer advanced services through an affiliate. Relying on affiliate 272-type safeguard rules alone thus will be inadequate to rein in ILEC monopoly abuse.

22-24 The FCC should require that an advanced services affiliate have a substantial percentage of outside ownership different from the ILEC. 40 percent public ownership of the advanced services affiliate, at a minimum, is necessary to limit the risk that an ILEC will carry on anticompetitive practices through its advanced services affiliate.

24-27 An ILEC advanced services affiliate should be required to obtain all traditional telecommunications capabilities through the purchase of UNEs, not through total service resale. Total service resale presents serious disadvantages for competitors not affiliated with the ILEC. At the same time, purchasing UNEs presents a higher cost option to total service resale for entry by competitors. To place the ILEC advanced service affiliate and the non-affiliated advanced service providers on an even playing field, it is thus necessary to require that the ILEC affiliate take all traditional telecommunications capabilities from the ILEC through the purchase of UNEs, rather than total service resale.

27 The FCC should prohibit joint marketing and advertising by the ILEC and its advanced service affiliate.

28-29 The FCC does not go far enough in requiring independent operation of the ILEC and its affiliate. Complete and total separation is required. The FCC should prohibit the ILEC and its affiliate from jointly owning any facilities or equipment, including transmission capacity, databases, signaling systems, and multiplexers. There should not be any joint ownership of real property or interests in physical space. Nor should there be non-telecommunications functions and services provided by an ILEC to its affiliate unless they are available on the same terms and conditions to others.

29-31 The ILEC affiliate must not receive any information advantages, including favorable access to CPNI. Otherwise, favorable CPNI access would give an ILEC affiliate a huge competitive advantage over non-affiliated entities.

31-33 Unaffiliated CLECs must be able to adopt any portion of an interconnection agreement between an ILEC and its advanced services affiliate. Otherwise, if CLECs can only take an existing interconnection agreement in its entirety, an ILEC could include a "poison pill" provision that would not be unacceptable to its ILEC affiliate but would make the agreement unattractive to CLECs. For instance, an ILEC affiliate is indifferent to reciprocal compensation and could accept an agreement without it because termination revenues have no net effect on the ILEC-affiliated enterprises overall profits. In contrast, forgoing reciprocal compensation revenues would not make business sense for an unaffiliated CLEC because it would have no other way to recover its costs of transport and termination of ILEC-originated traffic.

33-35 To be truly separate, an advanced service affiliate must be prohibited from accepting the transfer of any tangible or intangible asset or thing of benefit from the ILEC, without exception. This would include the transfer of the value of ILEC trademark or service mark to the affiliate.

35-38 The FCC should adopt the next generation of collocation through "shared space cageless collocation", in which equipment of multiple CLECs is collocated side by side in an area dedicated to that purpose, or common space cageless collocation, which CLEC equipment is collocated in the same controlled environment as the ILEC's own equipment (citing CompTel White Paper No. 2 "Uncaging Competition" at Attachment B).

38-40 The FCC should adopt national collocation standards. ILECs should not be permitted to impede competition by restricting the type of collocation equipment acceptable. Collocation of all multi-purpose equipment, regardless whether it also is capable of or performs switching functions, should be permissible. Limitations as to size of equipment also should not be used to prevent collocation where cageless environments will reduce concern over exhaustion of collocation space.

40-42 Security in shared or common space cageless collocation environments can be provided through a combination of: proper labeling of equipment; verified access codes for entry and egress of personnel; video surveillance cameras; and locking cabinets.

43-45 The FCC should adopting a "pre-request" collocation process to allow parties to resolve potential space exhaustion concerns before they become a real problem. The burden should be on the ILEC to take steps to mitigate potential space exhaustion, including removal of equipment that is retired in place. ILECs also should be prohibited from hoarding collocation space.

45-48 The FCC should define specific additional advanced service UNEs using a technology neutral functional approach. Competitive entry into the growing market segment for advanced communication services requires ILECs to sell fully equipped xDSL loops and DSL capable loops on an unbundled basis. The FCC also should define at least two new network elements that would provide the functionality necessary to support competitor-provided data services using xDSL or DSLAM technologies – a "shared data transport" network element that would provide data transport between a CLEC's data network and any other point on the ILEC's data network interfacing with a packet device; and a "shared data channel" network element that would extend from the interface of the CLEC's data network to the customer location.

48-52 Wholesale modification of LATA boundaries is both unnecessary to promote universal availability of advanced services and unwise. The existing rural ILEC exemption from interconnection obligations already is designed to promote access to advanced service in rural areas. BOC provision of advanced services to elementary and secondary schools also is already exempt from interLATA restrictions. The FCC should continue its existing policy of modifying interLATA restrictions only on a limited, case-by-case basis.

14. COTTONWOOD COMMUNICATIONS

1-5 The FCC should not ease regulatory restrictions on ILECs until the local loop is open to competition. Cottonwood has experienced discriminatory conduct by U S West in its Omaha video dialtone trial, exemplifying a type of advanced video service capability that – absent regulation -- is prone to ILEC abuse. Accounting safeguards will not sufficiently prevent an ILEC from extending its monopoly power into non-regulated advanced services, just as U S West has done in the Omaha video dialtone trial. Cottonwood has been unsuccessful in obtaining access to U S West's communications network in Omaha, for which U S West holds a 15 year cable franchise. In lieu of proper oversight and enforcement by the FCC in U S West's Omaha trial, Cottonwood has been forced to file a federal lawsuit to seek relief (attaching exhibits from the lawsuit as evidence of anticompetitive conduct by U S West's unregulated VDT affiliate in refusing to deal in good faith with Cottonwood).

15. CTSI, INC.

2 Commission should carefully craft any separate subsidiary exception to ensure that ILECs are not permitted to discriminate, e.g., Commission left open the possibility of allowing joint operation and ownership of transmission facilities and does not prohibit joint marketing and use of brand names.

2 If Commission decides to permit ILECs to establish affiliates exempt from Section 251(c), it must be careful to ensure that the affiliate does not: (1) have control over assets used to provide monopoly telecommunications services; and (2) will not be afforded favorable treatment in order to gain access to monopoly controlled facilities and equipment.

3-4 Seven structural separation requirements proposed by FCC do not go far enough.

- Complete structural separation is essential because the ILEC and the affiliate will be providing service in the same market.

- Requirement should be expanded to prohibit joint ownership of ANY facilities.

- Commission should prohibit joint marketing and/or advertising with the ILEC of local exchange or exchange access services and the affiliate should be required to choose a name that is unambiguously distinct from that of the ILEC and its corporate parent.

- Affiliate should not be permitted to share any personnel, CPNI, and administrative functions.

5 Agrees with Commission's conclusion that if an ILEC transfers to an unaffiliated entity ownership of any network elements that must be provided on an unbundled basis or any local loops, the affiliate would be an assign of the ILEC and required to comply with Section 251(c). Urges the Commission to refrain from adopting "de minimis" exception.

6 Disagrees with Commission's suggestion that the network disclosure rules might constitute sufficient notification to the industry of transfers to the affiliate. Commission should establish a detailed preapproval process for the affiliate—Commission must require ILEC to submit a complete plan for establishing the affiliate.

7 Commission should establish enforcement procedures for CLECs to bring complaints against ILECs and affiliates violating the rules.

7 Supports proposal to adopt national collocation standards—would encourage the deployment of advanced services by increasing predictability and certainty.

8 Commission should require ILECs to permit collocation of all types of equipment and should ensure that appropriate space will be made available. Commission should not distinguish between circuit or packet switching equipment.

8 Agrees that if an ILEC chooses to establish an advanced services affiliate, the ILEC must allow CLECs to collocate to the same extent as the ILEC allows its advanced services affiliate to collocate equipment.

9 Agrees that additional types of collocation, including cageless collocation should be made available.

9 Urges the Commission to require ILECs to permit CLECs seeking physical collocation to tour the ILEC premises.

10 Commission should require ILECs to provide increased access to local loops.

- Commission should require ILECs to provide loops that are free of bridged taps, load coils, and midspan repeaters, on request.

- ILECs should be required to provide CLECs on request with sufficient information about the loop to enable them to determine whether the loop is capable of supporting xDSL.

11 Commission should require subloop unbundling—should require ILECs to provide access o feeder cable, portions of loops and remote terminals. If existing pedestals or remote terminals do not have sufficient space to accommodate all requests for unbundled access, Commission should require ILECs to construct, or allow the CLEC to construct, an adjacent remote terminal.

12 Does not support Commission's suggestion that it should grant Section 251(c) relief to ILECs that offer advanced services on an integrated basis—Commission does not have that authority under Section 10 of the Act.

12 ILECs must establish a wholesale rate and offer for resale any advanced services it generally offers to subscribers who are not telecommunications carriers.

13 Objects to any modifications of LATA boundaries that would permit BOCs interLATA entry prior to compliance with Section 271 of the Act.

16. E.SPIRE COMMUNICATIONS INC. ("e.spire")

3 The Commission's proposal to permit ILECs to establish advanced services affiliates free from ILEC interconnection, unbundling and resale obligations cannot be squared with the requirements of Sections 251 or 706.

3-4 Section 272 never was intended to apply to the in-region provision of advanced data services by an ILEC affiliate. Rather, the structural separation requirements of Section 272 and the *Non-Accounting Safeguards Order* are intended to govern the manner in which a Regional Bell Operating Company ("RBOC") affiliate may provide long distance services within the RBOC's local market once the local and long distance markets in its territory have been opened to competition.

4 The Commission Cannot Release Separate ILEC Affiliates from the Requirements of Section 251.

5 It simply is not possible to create truly separate ILEC affiliates that provide only advanced data services. . . . Separate voice and data networks do not exist: data can travel over voice circuits, and voice can travel in cells or packets. Similarly, many specific pieces of equipment cannot be classified on the basis of whether they are used exclusively for the transmission of voice or data.

5 The Commission must be prepared to recognize that any so-called separate ILEC "data" affiliate established, as proposed in the *NRPM,* would be positioned to provide any retail telecommunications service – local, wireless, long distance, as well as advanced data services – on a largely deregulated basis.

6 This desire to shield these network investments from competitors would necessarily redound to the detriment of the existing public switched network.

7 The Commission must take every step to ensure that these ILEC advanced services affiliates do not receive any advantages by virtue of their ILEC affiliations. Moreover, the Commission must adopt and enforce an absolute bar on discrimination by an ILEC in favor of such an affiliate.

8 Because, as the Commission acknowledges in the *NRPM,* the "competitive" situation in the local markets is not, in fact, actually competitive, the Section 272 model is insufficient to ensure the establishment and maintenance of truly independent advanced services affiliates.

9-10 In addition to restrictions on ownership of facilities, land, and buildings associated with switching equipment, the Commission should prohibit joint ownership of any telecommunications facilities or equipment, and of any interest in real property or physical space. . . . Further, all administrative functions – such as payroll, procurement, personnel, legal, and the like – also must be performed independently. In addition, and perhaps most importantly, to avoid any consumer confusion between the ILEC and its affiliate, the Commission must prohibit the affiliate from engaging in joint marketing and advertising with the ILEC, and from using in any way the ILEC's brand name. . . . That is, in any case where use by an unaffiliated entity of an ILEC brand would constitute trademark infringement, such use by an affiliate likewise should be prohibited.

11 It is necessary for the FCC to apply these affiliate transaction rules, as well as the nondiscrimination rule discussed below, not only in the context of transfers from the ILEC to the affiliate, but also from the affiliate to the ILEC. Without such a reciprocal obligation, the ILEC could avoid its own Section 251 obligations by locating essential facilities or equipment with its affiliate rather than with its local exchange operations, and then obtain access to the assets by resale from the affiliate.

11-12 e.spire suggests, however, that the Commission go further and require that an advanced services affiliate have a substantial percentage of outside ownership that is different from ownership of the ILEC. . . . It should be noted that this ownership restriction should not be considered as too strict or rigorous – as, indeed, should none of the other restrictions or requirements proposed by e.spire – because the creation of an advanced services affiliate is of course entirely voluntary in the first instance.

13 Allowing the ILEC affiliate access – or even the promise or possibility of access to – the ILEC's vast assets would allow the affiliate to derive an unfair advantage from its relationship with the ILEC and prevent true independence.

13 ILEC advanced services affiliates must be prohibited from discriminating in favor of their ILEC siblings or parents in order to ensure that neither they nor the ILECs are able to avoid their statutory obligations.

14-15 If the Commission truly wants to ensure that an ILEC advanced services affiliate does not have an unfair advantage because of its relationship with its ILEC parents, it must reverse its February decision so that CPNI is included as information subject to Section 272's nondiscrimination requirement, and extend that reasoning to ILECs and their advanced services affiliates. Allowing an advanced services affiliate to obtain CPNI from its ILEC parent clearly would give it an information advantage that would defeat the FCC's goal of having ILEC advanced services affiliates function just like CLECs.

15-16 To prevent ILECs from using such volume commitments as a means to provide favorable terms and conditions to only their affiliates, e.spire submits that the Commission should not permit ILECs to vary terms and conditions offered to their affiliates unless comparable volume commitments have been agreed to by no less than five CLECs who have entered into state commission approved interconnection agreements in the relevant state and have met those volume commitments for three consecutive months.

16 In addition, e.spire suggests that the Commission require that competitive unaffiliated entities be able to adopt either all *or any portion* of the interconnection agreements executed by ILECs and their separate advanced services affiliates.

16 Structural Separation Rules Should Apply Regardless of the Size of the ILEC – These Rules Should Not Sunset.

17 e.spire strongly disagrees with the Commission's proposal to classify as nondominant ILEC advanced services affiliates to the extent that they provide interstate exchange access services.

18 To ensure that its goal of expanding the range and effectiveness of interconnection and unbundling options available to CLECs is achieved, the Commission must not permit an ILEC advanced services affiliate to resell any services obtained from its parent.

19 The Commission must require ILEC advanced services affiliates to obtain the capabilities they need to provide retail service through the purchase of UNEs.

20 e.spire believes that *any* transfer, under any circumstances, from the ILEC to its affiliate, whether of equipment, facilities, real estate, information, personnel, or any other asset enumerated in the *Order/NRPM*, and regardless of where the asset is located, would subject the affiliate to regulation as an ILEC.

20 Accordingly, the Commission should not exempt, for any period of time, ILEC advanced services affiliate transfers from either the affiliated transaction rules or the nondiscrimination requirement proposed in the *Order/NRPM*. For similar reasons the Commission should refrain from adopting any other exceptions -- including, but certainly not limited to, any sort of *de minimis* exception – to any restrictions imposed on ILEC transfers to their advanced services affiliates.

21 The unavailability and exorbitant expense of physical collocation space in ILEC central offices is a substantial barrier to CLEC efforts to deploy advanced telecommunications capability.

21 Under Sections 201 and 251 of the Act, the Commission unequivocally has the authority to establish national collocation standards in order to promote local competition and speed the deployment of advanced services.

22 In adopting national standards, the Commission should require ILECs to provide the Extended Link at cost-based rates, and without use restrictions, to support the provision of all telecommunications services.

23 The Commission should specifically require ILECs to allow CLECs to share collocation space, ***including space in existing collocation cages.***

24 e.spire urges the Commission to promulgate national collocation rules requiring ILECs to make available these cageless collocation arrangements. The Commission also should clarify that CLECs can install and perform routine maintenance on their collocated equipment, without ILECs imposing the added cost of a line of sight escort, so long as the work is performed by an ILEC-approved contractor.

25 Thus e.spire submits that the Commission should identify adjacent collocation as one of the options that must be made available to CLECs seeking physical collocation. Further, with respect to "adjacent off-site collocation," e.spire urges the Commission to make clear that the cost of the mid-span meet must be shared by the ILEC and the CLEC.

25 When one ILEC makes a new form of collocation available, e.spire submits that the Commission should endorse a very strong, but potentially rebuttable, presumption that the new form of collocation is technically feasible at other ILEC premises.

25-26 In any national collocation standards, the Commission should specify that ILECs may not limit a CLEC's efforts to cross-connect collocated equipment – either within the same collocation area or between different areas of the same central office. . . . As is the case in Texas, the rules also should specify that the CLECs *themselves* should be allowed to perform all installation associated with the cross connects.

26 In the absence of an effective enforcement mechanism, even the best collocation rules will not speed the deployment of advanced technologies. Therefore, the Commission should clarify that the FCC's new Accelerated Docket will have jurisdiction over collocation disputes between ILECs and CLECs.

26 Base-line provisioning intervals should be included in any Commission collocation standards.

26 To encourage ILECs to meet Commission-set provisioning deadlines, e.spire recommends that the Commission endorse liquidated damages rules, similar to those promulgated by the Texas PUC, for use in cases where an ILEC fails to meet provisioning deadlines.

27-28 The Commission should modify its collocation rules to provide that any equipment that contains routing, aggregating, or multiplexing functionality, including remote switching modules, frame relay switching equipment, DSLAMs and IP routers, may be collocated in the central office.

28 Fine distinctions between equipment which is capable of switching versus aggregation, or basic versus enhanced services functionality, are increasingly infeasible. . . . Thus, e.spire respectfully suggests that ILECs should be required to permit collocation of any equipment necessary to provide any telecommunications *or* enhanced service. To the extent that any restrictions are placed on such equipment, the restrictions should be based on the size, not the functionality, of the equipment.

28 e.spire also agrees with the Commission's tentative conclusion that all equipment placed on ILEC premises be compliant with NEBS safety standards. However, e.spire does not support the requirement that equipment meet NEBS *performance* requirements.

28-29 e.spire strongly supports the Commission's tentative conclusion that ILECs "should . . . allow any competing provider that is seeking physical collocation at the LEC's premises to tour the premises" to confirm space exhaustion. e.spire similarly supports the Commission's tentative conclusion that ILECs must provide CLECs with information on the availability and use of collocation space in ILEC end offices.

29 Requiring ILECs and CLECs to report space utilization rates will ensure that scarce collocation space is used efficiently.

29-30 If a CLEC is not utilizing its space efficiently according to Commission rules, the CLEC should either sublease a portion of the space to another CLEC or turn the space back over to the ILEC.

30 e.spire submits that requiring escorts is needlessly expensive and time consuming, especially in cases where an escort has to be dispatched from a distant ILEC central office.

30-31 e.spire strongly urges the Commission to adopt minimum national standards regarding ILEC recovery of nonrecurring costs for collocation, including central office site preparation. In defining minimum standards, the Commission should establish a clear presumption against individual-case-basis ("ICB") or to-be-determined ("TBD") prices. In e.spire's experience, ICB and TBD prices often end up including hidden charges that can greatly increase the cost of collocation.

31 e.spire also submits that national standards specifically should preclude ILECs from passing through the entire cost of collocation space preparation to the first CLEC to occupy a portion of a collocation area.

32 e.spire submits that the Commission should adopt the cost recovery mechanism used in New York for reconditioned space, and permit ILECs to recover only the *pro rata* share of reconditioning costs from the initial collocators.

32 In virtual collocation arrangements, the ILEC maintains complete control of the collocator's equipment, and this degree of control of the ILEC data affiliate's equipment would produce an unmitigated opportunity for preferential treatment that e.spire believes would be undetectable. Thus, virtual collocation should not be permitted between and ILEC data affiliate and its parent.

34 e.spire supports the Commission's conclusion that minimum national unbundling standards will continue to support the development of local competition and the deployment of advanced telecommunications capability. The Commission's current loop definition properly focuses on functionality rather than technology.

34 Significantly, e.spire notes that the Commission's authority to define network elements and require unbundling, as well as its ability to do so based on facilities, functions, or both, recently has been upheld by the United States Court of Appeals for

the Eighth Circuit. e.spire respectfully submits that the Commission should use its clear authority to define network elements and require unbundling to establish an "Extended Link" UNE.

35 e.spire believes that the Commission should clarify that nondiscriminatory access to loop information regarding physical specifications, including loop type, length, conditioning and electronics already in place, is required.

35 If ILECs have such information, it should be consolidated into a "loop inventory" and shared it via OSS, web–site posting or providing requesting carriers with an electronic version on diskette. To facilitate the deployment of advanced telecommunications capability and accelerate the roll–out of competitive advanced service offerings, the Commission should require ILECs to update loop inventories on no less than a monthly basis.

36-37 The Commission should make clear that two different service providers can offer services over the same loop, with one carrier proving voice and the other providing data over different frequencies.

37 In conjunction with these unbundling rules, the Commission also should make clear that ILEC voice services still are subject to the resale requirement of Section 251(c)(4), even in cases where a CLEC seeking to resell the ILEC's voice service provides data service over the same loop on an unbundled basis.

38 Because loop technologies will continue to evolve, e.spire believes that it would be unwise to stray from a functional approach to defining UNEs.

39 e.spire submits that the Commission should adopt a rule establishing that all four types of loops must be made available on an unbundled basis.

39 Because ILECs currently pad their loop prices through the use of fancy labels such as ISDN and ADSL loops (typically, without providing the electronics that actually would make, for example, a four wire digital loop an "ADSL loop"), e.spire submits that the Commission should adopt a rule that requires ILECs to classify their loops as one of the four types listed above. With these classifications in place, the Commission then should adopt a uniform national framework for imposing unbundled loop recurring and nonrecurring charges. Consistent with current law, the rule should specify the manner – but not the amount – in which an ILEC can impose recurring and nonrecurring charges associated with its provisioning of each of the four loop types.

40 e.spire believes that ILECs must offer loops equipped with electronics (*e.g.*, ADSL-equipped loops) on an unbundled basis.

40 Because that definition does not contemplate, and the Commission's rules do not otherwise permit, an ILEC's stripping-away of electronics so that it can diminish the

functionality of unbundled loops it provides to its competitors, the Commission should prohibit ILECs from doing so, unless the competitor seeks access to the loop without electronics.

41 In light of the Eighth Circuit's recent shared transport decision, in which it upheld the Commission's functional approach to defining UNEs, there is no doubt that the Commission has the requisite authority to define the functionality offered by an Extended Link arrangement as a single UNE.

42 Thus, consistent with the Commission's task under Section 706, this new national minimum unbundling rule should require ILECs to offer Extended Links for all loop and transport types. Moreover, because the functionality defined does vary on whether the loop component of the Extended Link UNE employs "home run" copper or a DLC configuration, ILEC attempts to limit access on the basis of that technology-based distinction – or any other – also should be prohibited.

42 To maximize the effectiveness of its newly established "rocket docket," e.spire believes that the Commission preemptively should strike ILEC arguments that all such disputes must allege violations of state commission-approved interconnection agreements and, as a result, can only be heard by state commissions.

43 To limit the potential damage that could be done by freeing ILECs to launch operations outside the scope of Section 251(c), before they have demonstrated compliance with that section, the Commission must establish and enforce an absolute prohibition on discrimination.

44 Because IDLC-delivered loops bypass the distribution frame and terminate at the ILEC switch, they must be multiplexed before being handed-off to a CLEC. e.spire submits that ILECs can handle this task either by adding multiplexing before the switch or by using the switch itself to perform the multiplexing necessary to deliver the loop. Because the latter solution involves the use of ILEC "switching" equipment without the use of the switching functionality, the Commission should indicate that ILECs are not permitted to impose a charge for unbundled switching in this context.

45 If a technically feasible solution to provide xDSL-based service to a customer presently served by a DLC-delivered loop is bypass by additional copper infrastructure, an ILEC or its advanced services affiliate should not be able to avail itself of that option while denying or delaying that option to a CLEC.

45 If an ILEC or its advanced services affiliate provides xDSL-based services through the use of a DSLAM at the remote terminal, a CLEC must be able to avail itself of that option, either through the use of the ILEC's DSLAM or its own DSLAM collocated at the remote terminal.

45 ILECs must make available, in a nondiscriminatory manner, to CLECs the same methods that the incumbent or its advanced services affiliate uses to provide advanced telecommunications capability, including xDSL services.

45 An ILEC must provide a CLEC with the same loops it provides to itself or to its affiliate, regardless of whether the loop is "home run" copper or one that passes through a remote terminal.

45 Deployment intervals for provisioning xDSL-compatible loops should be the same for ILECs and CLECs regardless of whether the loop passes through a remote concentration device.

46 e.spire supports the adoption of a rule that would require ILECs to offer subloop components (feeder plant, concentration device, distribution plant) as UNEs, and that would require ILECs to allow collocation at subloop points, such as controlled environmental vaults and above-ground cabinets.

46 In specific circumstances, subloop unbundling is not technically feasible or there is insufficient space at the remote terminal, e.spire believes that ILECs should be obligated to provide an alternative unbundling method at no greater cost to the CLEC.

46-47 It seems unlikely that any of these UNEs could be characterized as being "proprietary" as defined in Section 251(d)(2), as all or nearly all equipment deployed in ILEC networks is purchased "off-the-shelf" from equipment manufacturers.

47 Indeed, unbundled access to elements such as individual packet switches is both technically feasible and necessary for CLECs, such as e.spire, to develop networks of interconnected packet switched networks.

47 e.spire agrees with the Commission's tentative conclusion that advanced services offered by ILECs to residential or business customers or to Internet service providers should be subject to the resale requirements of Section 251(c)(4).

49 e.spire submits that the Commission's fact-specific, case-by-case approach to LATA modification requests is appropriate, as the grant of general modifications would exceed the Commission's authority under the Act.

50 It is not only "large-scale" changes that exceed the Commission's authority to *modify* LATA boundaries – grant of any generally applicable changes to or piercing of LATA boundaries would exceed that authority as well.

50 Accordingly, e.spire submits that the Commission may not grant relief similar to that granted by Congress for "incidental interLATA services" defined in Section 271(g). Congress already carefully has carved-out these exceptions to the RBOC interLATA services restriction. Section 10(d) forbids the Commission from adding to them.

50 Even to the extent the Commission has authority to modify LATA boundaries, there simply is no evidence any interLATA relief is necessary to further the goals of Section 706 at this time.

51 It should not be overlooked that the RBOCs control their own destiny and, by

demonstrating compliance with Section 271, *all* LATA restrictions can be removed.

17. FEDERAL TRADE COMMISSION

3 FCC should ensure it does not adopt weak separation rules. Although they may encourage certain efficiencies between an ILEC and its affiliate, weak separation rules may thwart the development of a competitive advanced services.

3-12 Proposed separate affiliate requirements should be strengthened. FCC may wish to consider restricting the affiliate's use of the ILEC's corporate name or log if certain circumstances prevail. FCC may also want to impose restrictions on joint marketing activities between the LEC and its affiliate to prevent harmful discrimination.

12 To reduce potential for anticompetitive behavior, FCC may wish to impose certain conditions on joint marketing. FCC could permit referrals to companies offering advanced services (inbound telemarketing) provided that if the ILEC offers such services to its affiliate, it would have to make them available to all unaffiliated providers on the same terms and conditions. FCC could require the ILEC make available to all competitors on the same terms and conditions any customer information that it provides to its affiliate. For other marketing activities, FCC may wish to consider imposing prohibitions similar to those contained in the Act for an ILEC's electronic publishing affiliate.

18. FLORIDA PUBLIC SERVICE COMMISSION

3 Believes that NPRM is premature. NPRM is a natural extension of a prospective finding from its companion NOI that advanced telecommunications services are not being deployed in a reasonable and timely fashion. Conclusion cannot be made until the record of the NOI is submitted and analyzed. Believes that there is a significant likelihood that the evidence submitted in response to the NOI will show that advanced telecommunications services are being deployed adequately.

4 If evidence that advanced services is being deployed adequately is produced, then the premise of the NPRM is refuted and no direct FCC action is necessary.

4 Since the FCC's universal service policies have not even been completely implemented, it is premature to decide that advanced services need regulatory intervention to be deployed in a reasonable and timely fashion.

5 Agrees that all ILEC provisioning of advanced services is subject to the nondiscriminatory access, unbundling, and resale provisions of Sections 251 and 252, including all services, such as xDSL, as well as all facilities used in provisioning the services.

5 Has several concerns with the FCC's proposal to allow the ILECs to offer advanced

services through an unregulated affiliate. This assumes that advanced services are not presently being deployed, and that ILECs will not/cannot deployed advanced services on an integrated basis.

5 Questions why an ILEC would choose to offer advanced services through an affiliate unless the primary purpose was to escape interconnection, unbundling, and resale requirements.

6 Allowing ILECs to set up unregulated affiliates is fraught with problems. E.g., because xDSL is a packet-switched service, it is logical that ILECs would seek ways to move all packet-switching facilities to an unregulated affiliate—this could ultimately include SS7 or its successor.

7 If separate affiliates are required, believes that the most important requirements for transactions between ILECs and affiliates are that they be nondiscriminatory, at arm's length, and public.

8 Emphasizes that Section 706 gives independent authority to state commissions regarding deployment of advanced telecommunications services. Urges the Commission to refrain from occupying the field and that it recognizes the states' independent authority in this area.

19. GENERAL SERVICES ADMINISTRATION

7-8 ILECs should be permitted to provide advanced services through a fully separated and nonregulated subsidiary. Proposed plan will increase competition and reduce prices for telecommunications services.

8-9 Proposed restrictions on the relationships between the ILEC and its affiliate are critical to the success of the plan: (a) they present effective roadblock to anticompetitive activities by either the incumbent or its affiliate, and (b) they motivate ILECs to reduce prices for advanced services provided to end-users and interconnection services provided to other carriers.

10 Commission should relieve affiliates established by ILECs to provide advanced telecommunications services from any obligations to pay access charges. No access charges should be assessed on affiliates by the ILECs on the basis of the number of lines or the amount of traffic interchanged.

11-12 Commission should strengthen collocation requirements on ILECs. New entrants should be allowed to collocate all types of equipment on the ILECs' premises. Modern technology blurs the distinction between switching and multiplexing equipment because the current practice is to integrate multiple functions in a single unit.

13-14 ILECs should be required to offer a variety of collocation options to new entrants and

their affiliates. Concerned that space limitations may be impeding competition. Urges the Commission to require ILECs to fully explore options for different arrangements before declaring an office "full." ILECs must have the burden of showing that their affiliates are not receiving preferential treatment at the expense of their unaffiliated competitors.

14 Commission should establish unbundling requirements and standards for local loops to facilitate provision of advanced services. Urges the Commission to adopt regulations to ensure that information on loops is available to CLECs.

15 Commission should require unbundling of the local loops for advanced services. Urges the Commission to establish regulations that will require ILECs to make voice and data functionalities available to competitors separately, considering only the need to meet electrical transmission performance guidelines.

17 Concurs that ILECs must provide subloop unbundling unless they can demonstrate that it is not technically feasible, or that there is not sufficient space at a remote terminal to accommodate the requesting carrier.

18 Urges the Commission to adopt national guidelines covering spectrum management and equipment at the end of the loop.

20. GTE

1-2 The Commission's goals in adopting the NPRM -- "not to pick winners or losers, or select the 'best' technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of customers" -- are admirable given the public benefits that will result, the high level of competition in the advanced services market, and the lack of advantage held by any industry segment. GTE particularly supports the notion that ILECs must be able to make advanced services investment and deployment decisions based on the market and business plans rather than regulation. However, the proposed alternative pathway will deter investment by ILECs *and* their affiliates and competitors in advanced services. The expansion of the collocation and unbundling rules would exacerbate this effect. The Commission should instead adopt GTE's National Advanced Services Plan ("NASP").

2-6 The advanced services marketplace is competitive and does not rely on ILEC networks for essential inputs. ILECs are the newest entrants in the market for advanced services and hence lack market power; giant IXCs, wireless companies, cable companies, and satellite service providers have an immense head start and continue to expand and advance their service offerings.

6-8 Because the advanced services market is so different from and unrelated to the local exchange market, ILECs have no bottleneck control over any essential input to advanced services. Advanced services technology is not integrated into the ILECs'

existing network, but, rather, consists of "add-ons" that are readily and equally available to all competitors. Despite this, ILECs remain subject to unique regulatory burdens which distort competition in the advanced services market, and which would be worsened by the NPRM's proposals. This is contrary to law and public policy, and to the goals of Section 706.

9-10 The proposed hyper-separation rules for ILEC advanced services affiliates would unfairly disadvantage the affiliate vis-à-vis its competitors. These rules would handicap telephone networks-based advanced services alternatives in favor of cable modems, broadband wireless, satellites, and other options, thereby restricting market-driven consumer choice. Disparate regulation would discourage ILEC investment and innovation.

11 The proposed collocation, unbundling, spectrum management, and resale requirements raise serious legal, security, and technical concerns, and are not necessary to foster competitive delivery of advanced services. These proposals also would distort investment incentives for both ILECs and competitors.

12-16 GTE's NASP is an alternative, market-based approach that effectively achieves the FCC's goals and minimizes regulatory intervention in an efficiently functioning competitive market. The NASP creates a structure that will foster maximum capital investment and risk sharing by all competitors. Under the NASP ILEC affiliates that comply with Section 64.1903 of the FCC's Rules would be deemed non-incumbent and non-dominant and would not be subject to unbundling and discounted resale obligations. Existing separation rules governing ILEC provision of in-region interLATA services ensure non-discrimination and prevent cross subsidization. GTE's affiliate GTECC has been providing interexchange and non-dominant local service in compliance with these rules (and additional rules not necessary in this context) for two years. Compliance with that section would require: (1) separate books of account; (2) no joint ownership of transmission or switching facilities; and (3) an obligation to obtain from the ILEC telecommunications services at tariffed rates or pursuant to non-discriminatory, approved interconnection agreements. However, the ILEC should be permitted to transfer personnel and other resources or assets to deployed before the final date of the FCC's order in this proceeding.

17-18 Further, the affiliate must be a separate legal entity from the ILEC, housed in segregated space, but it may be staffed by personnel hired from the ILEC.

19 The affiliate should not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the ILEC's assets. In addition, contracts between the ILEC and its affiliate should be disclosed to regulators upon request.

20-22 The second component of the NASP consists of targeted modifications to the FCC's existing collocation rules, which will promote competition without creating undue burdens or undermining network integrity, as discussed more fully below.

23-25 The third component of the NASP consists of limited adjustments to the existing loop

unbundling rules set forth in the *Local Competition Order*. These requirements have been effective in enabling competition, and only minor adjustments will advance competition in the advanced services market. (1) ILECs should permit sub-loop unbundling upon bona fide request where such unbundling can be proved to be on a technically feasible basis. (2) ILECs may voluntarily provide conditioned loops even where they have not deployed advanced services, if they recover their actual costs of performing the conditioning.

25-27 As discussed more fully below, the seven ILEC advanced services affiliate separation rules proposed in the NPRM are inconsistent with the letter and spirit of the 1996 Act and Commission precedent, and would deter investment in and deployment of advanced services. The FCC should apply to advanced services the same separation rules applied to provision of in-region interLATA services by ILECs. If the FCC adopts additional separation rules, they should be modified as discussed below to permit affiliates a reasonable opportunity to compete.

27 GTE agrees that an advanced services affiliate should be presumed non-dominant to the extent that it provides interstate exchange access services, because it would not possess market power.

28 The Commission should not adopt any of the proposed restrictions on transfers or sharing of assets between affiliates.

29 The seven proposed separation requirements are not necessary to ensure that ILEC affiliates are not "successors" or "assigns" of the ILEC. Rather, they would increase the regulatory burden and expense on ILECs and undermine the ability of an ILEC holding company to establish affiliates capable of providing the "one-stop shopping" that their customers demand.

30-34 GTE agrees that the FCC has the authority to subject ILEC affiliates to Section 251(c) of the Act. However, the FCC does not explain why the proposed seven requirements are necessary to exempt a separate ILEC advanced services affiliate from successor or assign status, and hence to do so is beyond the Commission's authority. The FCC's interpretation of the *Non-Accounting Safeguards Order* is overbroad. That order addressed only the issue of transfer of bottleneck facilities -- not equipment used to provide advanced services. Further, the question of whether the transfer of bottleneck facilities should render an affiliate an "assign" is distinct from that of whether transfer of *any* network elements, including those readily available, should subject an affiliate to ILEC regulation. The seven separation requirements simply have nothing to do with ensuring that an advanced services affiliate does not qualify as an assign.

34-36 The seven separation requirements represent an abrupt break from FCC precedent regarding the degree of separation needed to accord an ILEC affiliate non-dominant status. The proposed rules are inconsistent with the *Regulatory Treatment Order*, in which the FCC found that LECs and their affiliates could share resources as long as those resources are not bottleneck facilities that would confer an unfair competitive advantage on the affiliate. The proposed rules are also inconsistent with the *Non-*

Accounting Safeguards Order, in which the FCC authorized ILECs to establish separate affiliates capable of competing with CLECs by offering bundled services, as long as the affiliates do not receive assignments of local exchange facilities that would give them an unfair competitive advantage. Customers want bundled services -- including exchange services, interLATA service, and advanced services -- from one company. Under the FCC's proposed rules ILECs would be forced to combine their interLATA and advanced services offerings in a single affiliate subject to the FCC's stringent new rules, an outcome which would eviscerate the *Non-Accounting Safeguards Order*.

Thus, at most, the FCC should apply to advanced services affiliates the same separation rules applicable to affiliate provision of in-region interLATA services, including 47 C.F.R. §§ 64.1901-03; 47 C.F.R. §§ 32.27; and 47 C.F.R. §§ 64.904.

37-38 The proposed separation requirements will have a detrimental effect on the deployment of advanced services, by raising carriers' costs and unduly limiting their ability to respond to a changing market. The proposed rules will make deployment more expensive in a variety of ways, most notably by preventing advanced services affiliates from taking advantage of the same efficiencies of scope and scale that are available to their vertically integrated competitors. For example, restricting ILECs' ability to provide operating, maintenance, and installation to the affiliate would undermine efforts already taken that were based on existing regulation.

39 ILEC corporate parents will be forced to choose between providing advanced services through an unfairly hyper-separated affiliate unable to compete effectively with CLECs, or through the ILEC which would be required to afford CLECs artificially discounted access to readily available equipment. Neither option is consistent with the 1996 Act.

40-41 At a minimum, the FCC's proposed separation requirements should be modified as follows to avoid creating massive, unnecessary inefficiencies: (1) the FCC should eliminate the proposed bar on ILECs performing operating, installation, or maintenance functions for their advanced services affiliates that obtain facilities on their own or from other parties, as long as the costs meet the affiliate pricing rules and the service is made available to other requesting entities; (2) the FCC may impose the requirement of separate officers, directors, and employees as long as the two entities can interact via established wholesale channels like any other unaffiliated carrier; and (3) the FCC should replace the proposed requirement that transactions be reduced to writing and posted on the Internet with an obligation to make contracts available on request. In addition, all separation requirements should sunset in 36 months.

42 The FCC should not adopt any additional restrictions on sharing of resources by affiliates and ILECs. Only the transfer of bottleneck facilities should result in an ILEC affiliate becoming an assign.

43 Transfer from an ILEC to an affiliate of DSLAMs, packet switches, and other equipment available in the competitive marketplace should not render an affiliate an

"assign."

44-47 Affiliate use of other resources obtained form the ILEC or its parent -- including customer accounts, employees, brand names, CPNI, and funds -- does not confer "assign" status. Contrary to the FCC's assumption, transactions such as these do not rise to the level of "transfers" -- rather, these constitute only "sharing of resources." The FCC has no statutory authority to impose ILEC status on advanced services affiliates on the basis of such resource sharing. In particular, requiring that affiliates obtain all funds for their operations totally independent from the ILEC and its parent would be extremely burdensome and unreasonable. Most of GTE's affiliates, for example, are not subsidiaries of the ILEC and are dependent on the parent for cash flow. In addition, GTE Corporation, the parent, is the owner of the GTE brand name. An affiliate's use of that brand therefore has nothing to do with the ILEC. Further, imposing additional conditions on affiliate use of CPNI gathered by the ILECs would be inconsistent with Commission precedent. Nor should the FCC limit the ability of an affiliate to market to customers of the ILEC, just as any other advanced services provider is able to do. Such marketing is pro-competitive. Finally, transfer of employees is not a realistic concern, as all departing GTE employees are subject to strict requirements to prevent the loss of proprietary information.

48-50 If the FCC imposes new restrictions on sharing of resources between ILECs and their affiliates, the Commission should permit a grace period during which transfers of equipment and sharing of other assets would not be subject to any new rules. GTE and other ILECs have made strategic investment and deployment decisions regarding advanced services on the good faith belief that their affiliates would be able to offer these services unencumbered by the new rules proposed in the NPRM. A grace period would allow the parent to reallocate resources to reflect the new regulatory environment.

50-53 Restricting ILEC affiliates in their ability to resell telecommunications services offered by the ILEC or to purchase UNEs from the ILEC would violate the fundamental principle of parity reflected in the 1996 Act and in the *Iowa Utilities Board* decision. The FCC may not place non-affiliated companies in a better competitive posture than the ILECs and their affiliates. Indeed, in the *Non-Accounting Safeguards Order* the FCC rejected this discriminatory approach, finding that the Act "does not place any restrictions on the types of telecommunications carriers that may qualify as 'requesting carriers.'" Finally, the FCC's existing non-discrimination requirements ensure that ILECs cannot subsidize or accord their affiliates preferential treatment in the resale of services or purchase of UNEs.

53-55 There is no evidence to suggest that advanced services affiliates are likely to favor ILEC-affiliated ISPs, or that the affiliate and the ILEC could act in concert to engage in a "price squeeze" on unaffiliated ISPs. In addition, existing regulations governing such interactions are sufficient to protect against the kinds of behavior the FCC fears. Moreover, ILEC ISP affiliates are already having trouble competing effectively in the information services market. Thus, the Commission should not impose additional restrictions on ILEC affiliates that offer information services -- to do so would

impede the ability of ILEC-affiliated ISPs to compete with entrenched non-affiliated ISPs.

56-57 The FCC should preempt any state regulation that would impose more burdensome requirements on ILEC affiliates than those adopted by the Commission.

58-60 A broad revision to the FCC's collocation standards is not needed to accomplish the goals of Section 706. Existing collocation rules sufficiently address the type of equipment that may be collocated, the allocation of collocation space, procedures applicable to the use of virtual collation, and the circumstances of space exhaustion. These rules promote facilities-based competition and encourage the deployment of advanced services, as contemplated by Section 706. Importantly, the FCC already has reviewed and dismissed many of the NPRM's collocation proposals. Finally, the existing collocation standards recognize the import role that states have in ensuring that the Act's reasonable and non-discriminatory collocation standards are met.

60-63 Mandatory collocation of switching and other equipment is inconsistent with Section 251(c)(6) and the *Local Competition Order*. In addition, because there is no express legislative authorization, expanded collocation rules would raise serious constitutional issues under the Takings Clause.

64-65 Any modifications to the rules governing equipment collocation should not unfairly burden ILECs. Thus, GTE agrees that ILECs must allow CLECs to collocate equipment to the same extent as the ILEC allows its affiliate to collocate equipment: the FCC should not differentiate between collocation of the equipment of CLECs and ILEC affiliates. For similar reasons, the Commission should not adopt its tentative conclusion that an advanced services affiliate should not be permitted to collocate its switching equipment if there is only enough room at the central office for one carrier to collocate such equipment.

65-66 GTE agrees with the FCC that ILECs may require that all equipment that a new entrant places on the ILEC's premises meet safety requirements to avoid jeopardizing the safety and reliability of the ILEC's network. Compliance with Bellcore's NEBS Level 3 standards for all collocated equipment is the most accurate and efficient way to maintain network integrity.

66-73 GTE supports incorporating additional flexibility into the collocation rules in several specific areas. (1) Upon request, collocating parties should have the flexibility to place their equipment in "shared" collocation space dedicated to CLEC use, with or without cages. (2) CLECs should be permitted to use a third-party inspection in conjunction with state commission review to confirm that space in a central office is exhausted; the CLEC would pay the fee if the finding of exhaustion is upheld, the ILEC if the finding is overturned. (3) CLECs should have the flexibility to lease collocation space in increments of 25 square feet to ensure that central office space is allocated efficiently and avoid the problems created by offering space in non-standard sizes. (4) CLECs should be able to sub-lease space within collocation cages, if the requesting party remains liable to the ILEC for payment and for security within the

cage. However, cageless collocation arrangements without any physical separation between ILEC and CLEC equipment would be impractical and substantially increase the costs associated with collocation. Cageless collocation also raises substantial security concerns by opening access to the ILEC's facilities to other providers.

73-75 GTE disagrees with the FCC's tentative conclusion that an ILEC should submit to a requesting carrier a report indicating the ILEC's available collocation space. A reporting requirement such as this is unnecessary because the information required for CLECs to make informed decisions regarding collocation already is available from several sources. In addition, the Commission should not require ILECs to report data when there is no legitimate need for the information or where confidentiality concerns are implicated. When GTE gets a written request for collocation space and accompanying fee, it surveys the office to see if space is available. If space is not, GTE denies the application and returns the fee. GTE makes this determination within 10 days. GTE also maintains a list of GTE central offices that cannot accommodate additional physical collocation in its FCC tariff, which is also available on GTE's website.

75-76 Rules governing allocation of site-preparation costs and establishing national minimum site-preparation requirements are unnecessary. GTE's policy is to assess the up-front charges on the first CLEC seeking to collocate in GTE's central office. Subsequent collocators are assessed an appropriate proportional amount, with refunds given to the earlier CLECs. The process of negotiating these conditions is a better solution than a one-size-fits-all process that limits the flexibility of all parties.

76-81 The FCC's existing local loop requirements are sufficient to promote the development of advanced services. Obligations imposed on ILECs are clear: they must provide access to unbundled xDSL-compatible loops on a non-discriminatory basis, and, if technically feasible, condition loops to support digital functions. The market for xDSL and other advanced services emerged under the existing rules and continues to grow. Further regulation could have a detrimental effect. If the Commission does decide to adopt additional rules, it should identify a range of acceptable outcomes, which would allow states to tailor what works best to individual markets. Finally, GTE opposes elevating particular state requirements to a national standard.

82-83 The FCC's existing rules governing ILECs' OSS are sufficient to ensure that competitors have access to necessary information. Specifically, ILECs should not be required to build and maintain a new database comprised of xDSL or any other specific loop capabilities. Such a requirement would be burdensome and costly, and inconsistent with the Act.

83-85 The FCC's loop spectrum management rules should prevent spectrum interference and protect existing services.

86-89 Spectrum unbundling is not required by the Act, raises significant technical and practical difficulties, and should not be mandated. GTE opposes "horizontal

unbundling" of bandwidth for several reasons. First, loop spectrum is not a network element under the 1996 Act. Second, the FCC may not require that loop spectrum be unbundled because such unbundling is not "necessary" as contemplated by Section 251(d)(2) and interpreted by the Commission in that the CLEC can always obtain the entire loop or a physical sub-loop and make arrangements with other carriers to provide voice services. Third, there are operational and administrative issues that create significant obstacles to spectrum unbundling. Thus, the Commission should affirm its earlier finding and conclude that if a CLEC purchases the loop as a UNE, it should be responsible for providing all of the services that its customers desire over that particular facility.

90-91 Uniform national standards for attachment of electronic equipment (such as modems and multiplexers) at the central office end of a loop by ILECs and new entrants are unnecessary and counterproductive. Rather, the FCC should preserve the industry's flexibility to solve interoperability issues and develop consensus standards as technologies develop.

91-92 The current definition of the local loop is sufficient to ensure that CLECs have access to the loop functionalities needed to offer advanced services. The record established so far in all associated Section 706 proceedings shows that the existing framework is working.

92-97 The FCC's proposed rules regarding access to unbundled loops are overbroad and raise serious technical issues.

First, numerous technical, administrative, and operation constraints make the unbundling of loops passing through DLCs or other remote concentration devices infeasible. For example, there are dozens of different types of DLCs and switch remote units throughout GTE's network, which were designed to function and be administered in a single LEC environment. Moreover, the DLCs that exist today in GTE's network cannot accommodate the kinds of advanced services now offered, and technology needed to extend xDSL services through facilities such as DLCs is not yet being deployed.

Second, GTE disagrees with the FCC's tentative conclusion that CLECs may request *any* technically feasible method of unbundling the DLC-delivered loop, and that ILECs are obligated to provide the particular method requested. While the Act requires ILECs to unbundle at any technically feasible *point*, it does not require ILECs to use any "feasible *method*" for unbundling. For reasons of network management and reliability, ILECs must be allowed to unbundle a DLC-loop or any other loop by a method that poses the least risk to the network's operation. Finally, multiple unbundling methods would impose significant burdens on ILECs.

Third, regarding non-discriminatory access to xDSL-compatible loops, GTE disagrees with the FCC that CLECs must be given access to loop/DSLAM combinations. The classification of an xDSL loop, with mid-loop electronics, as a UNE violates the *Iowa Utilities Board* decision.

Fourth and finally, GTE opposes the adoption of any prescribed standard deployment intervals. The Commission should leave establishment of any such standard intervals to voluntary, private negotiations backed by state mediation or arbitration, as Congress intended.

98-101 The Commission's proposed rules regarding sub-loop unbundling are overly intrusive and unnecessary. The FCC should not adopt a new policy of requiring sub-loop unbundling -- the practical ramifications of sub-loop unbundling on network reliability and service integrity have not changed since the Commission refused to require ILECs to unbundle sub-loop elements in the *Local Competition* proceeding. GTE also objects to collocation at DLCs/other remote terminals. There is no spare space at many of these terminals, and it would be expensive and inefficient to remove or rearrange already installed equipment to make room for collocated equipment. If, however, the FCC mandates access at these locations, it should be only on a "first come, first served" basis, and there should be no differentiation between CLECs and ILEC affiliates.

In sum, GTE and other ILECs have fully complies with the existing local loop rules, and there is no basis for concluding that even more intrusive requirements are needed.

101-08 Pursuant to the *MO&O* in this proceeding the FCC has concluded that all equipment and facilities used in the provision of advanced services are "network elements" subject to the obligations of Section 251(c). GTE believes that under Section 251(d)(2) the only network element that ILECs must offer on an unbundled basis for the provision of advanced services is an xDSL-conditioned loop, not including the electronics that attach to the loop. The loop is "necessary" because access to this allegedly bottleneck facility can only be obtained through the ILEC. By contrast, ILEC provision of xDSL electronics is not "necessary" because: (1) the equipment is readily available elsewhere; and (2) provision of electronics is not a "prerequisite for competition" because competitors need only a conditioned loop and collocation in order to provide a competitive xDSL offering. However, if the FCC determines that ILECs must offer DSLAMs and other xDSL electronics as UNEs, it should establish reasonable limitations on this obligation.

Section 251(d)(2) makes clear that the Act's unbundling mandate was not meant to require ILECs to provide competitors with all of their innovative offerings and capabilities. This would have a chilling effect on ILEC investment and innovation, and threaten the goals of Section 706. Further, if competitors are allowed to exploit the investments and innovation of ILECs, they also will have less incentive to develop their own new advanced services offerings.

108-11 The Commission should not compel ILECs to offer advanced services for resale at wholesale rates. Advanced services are neither provided "at retail," nor "to subscribers who are not telecommunications carriers." Even if the FCC determines that the resale discount requirement may apply to some advanced services, it should forbear from enforcing this requirement. Forbearance is authorized because the requirements of Section 251(c)(4) have been fully implemented and the criteria of

Section 10 are satisfied. Finally, requiring ILECs to offer advanced services at a wholesale discount would inhibit investment and innovation by both ILECs and CLECs, for the reasons discussed above.

112-114 Given the robust competition in the advanced services market today, and the lack of ILEC control over any essential inputs into advanced services, GTE applauds the Commission's proposed alternative pathway. However, the FCC should reconsider adoption of its proposed hyper-separation requirements, and, instead, adopt a regulatory scheme similar to the NASP.

21. GVNW INC./MANAGEMENT

3 A rural LEC found by a state to be eligible for the Section 251(f) rural exemption from statutory resale and interconnection obligations should be free to offer advanced telecommunications services on an integrated, non-structurally separated, basis for at least a period of three years.

4-5 Providing advanced services through a separate affiliate with discrete management and financing is economically infeasible in rural markets. Given the low profit margins in rural markets, ILEC financing is needed to fund advanced services in low-demand rural markets, even with universal service support.

6-7 The FCC must consider unique rural circumstances in setting collocation standards. State and municipal electric, fire and building code compliance is important to promote public safety. If the FCC requires cageless collocation facilities, rural ILECs will incur increased costs, since most would have to install security systems to monitor access to cageless central offices.

8-9 Rural ILECs have limited space available for collocation of competitor equipment. Making room for competitor equipment by mandating removal of "obsolete" ILEC equipment would potentially discriminate against rural ILECs because equipment deemed "obsolete" for urban markets may be adequate to support light route transport in rural areas. The FCC should refrain from ordering ILECs to provide collocation information to competitors that are not certified by the appropriate state regulatory. Absent a certification requirement, rural ILECs may incur unnecessary expense in responding to frivolous requests for collocation information.

9-10 A single entity must be in control of loop electronics to identify and resolve potential conflicts. Otherwise, a competitor might deploy technology such as Discrete Multi-Tone ("DMT") ADSL that incompatible with underlying T-1 circuitry, posing a risk of loss of service.

11-16 Ordering small ILECs to conform to RBOC-based national standards would result in greatly increased costs to rural ILEC customers.

22. ILLINOIS COMMERCE COMMISSION

3 Concurs that Section 251(c) obligations should not be imposed on advanced services affiliate to the extent that advanced services affiliates do not meet the definition of ILECs under Section 251(h). Believes, however, that the Act does not foreclose the State commissions from imposing additional obligations on non-ILECs as long as the additional obligations are consistent with the Act.

3 The advanced services affiliate should not be limited in its ability to resell telecommunications services or purchase UNEs from the ILECs, but those wholesale services or UNEs should be made available to the advanced services affiliate through tariffs or interconnection agreements. Applicable rates, terms and conditions should be made available to unaffiliated advanced services providers.

3 Declines to comment on whether the advanced services affiliate should be considered an assign of the ILEC if it acquires facilities on its own, and not be transfer from the ILEC, because many factors can contribute to this analysis.

4 Notes that the affiliate's position in the market would not be impacted by the manner in which the affiliate attained its facilities, and that classifying the affiliate as a non-ILEC merely because the affiliate acquires its own facilities may be improper and may stifle competition.

4 Agrees that any transfer of local loops from an ILEC to an advanced services affiliate would make the affiliate an assign of the ILEC and subject to Section 251(c).with respect to those loops.

5 Agrees that if an ILEC sells or conveys central office or other real estate in which equipment used to provide telecommunications services is located to an advanced services affiliate, that would make the affiliate an assign of the ILEC.

6 Declines to opine on the appropriateness of de minimis exceptions as they relate to the transfer of equipment used to provide advanced services from an ILEC to its advanced services affiliate. If FCC concludes that a de minimis exception is appropriate, the determination should be made on a case-by-case basis.

6 FCC should develop a mechanism whereby the FCC works with State commissions to address specific proposals by ILECs to transfer equipment to their advanced services affiliate. FCC should also seek State commission input on whether designating the advanced services affiliate as an assign to the ILEC is warranted.

8 Supports the concept of minimum national collocation standards conditioned on (1) the recognition of State authority over this subject, (2) the continued flexibility of the States to determine and impose additional standards for technical, demographic, or geographic reasons, and (3) the continued flexibility of states to consider and impose additional interconnection standards in order to promote efficient competition in the local exchange market. Recommends that the FCC make available a waiver

provision to allow State commissions to deviate from minimum national standards if needed.

8-9 Notes that it enforces collocation requirements through a defined process which, among other things, sets forth an expedited 60-day complaint process against carriers that engage in activities that impede the development of competition.

9 Recommends that CLECs should be required to use NEBS compliant equipment where the ILEC uses such compliant equipment.

10 Would support minimum national standards with regard to allocation of collocation space, as long as the standards recognize that States have authority to set standards for those services, and so long as they do not interfere with the States' flexibility to impose additional standards as they deem necessary. Also, the standards should provide for waivers.

10-11 ILECs should have the flexibility to determine the type of security necessary for a particular CO. As long as the ILEC does not preclude CLECs from entering the CO, or unduly places burdens upon the CLECs for movement within the facilities, the decisions regarding security should be those of the ILECs.

11 If the FCC concludes that escorts for CLEC technicians are necessary, it should make clear that (a) the ILEC should not use the escorts as a reason to deny CLECs access to the CO, and (b) the escorts should not hinder the CLEC technician's access to necessary equipment.

12 Agrees that State commission are in a better position to evaluate issues associated with space allocation in an ILEC's COs. Recommends that if the ILEC denies physical collocation requests, it should allow the CLECs to tour the facilities; CLECs can then file a complaint, if dissatisfied, requesting independent verification.

13 Notes that a number of interconnection agreements which it has approved, state that switching equipment cannot be collocated.

13 Believes that the FCC should only adopt minimum national rules for local loops, while recognizing that the States have authority to adopt standards for local loops and loop provisioning requirements.

13 Currently requires interconnection and subloop unbundling pursuant to 83 Illinois Administrative Code Part 790 which, among other things, requires ILECs to offer subloop unbundling to the extent it is technically feasible and will not harm the network or cause the services of another carrier to be degraded as a result of the interconnection. This rule also allows CLECs to request subloop unbundling through a BFR process.

14 Believes that interconnection, at any technically feasible point, in the loop should be

made available to competing providers to the extent it does not harm the ILEC's network or its ability to offer service (including access to xDSL equipment). Term "technically feasible" should include the ability of the ILEC to adequately distribute the costs for the interconnection and use of the interconnected equipment.

15 Agrees that ILECs should provide requesting CLECs with sufficient detailed information about the loop in order to allow CLECs to determine whether the loop is capable of supporting xDSL. Recommends that ILECs make the loop wire gauge and size available to alternative advanced service providers because they are important components in the determination of the speed and feasibility of advanced service offerings over a loop.

15 Concurs that ILECs should be required to provide loops capable of transporting high-speed signals where technically feasible; agrees that the ILEC should bear of demonstrating that it is not technically feasible to provide requesting carriers with xDSL-compatible loops.

15 Agrees that CLECs may request an technically feasible method of unbundling DLC-delivered loops, and that the ILEC is obligated to provide the particular method requested, unless the ILEC demonstrates that the method(s) requested are not technically feasible, in which case the ILEC may offer another unbundling method that would provide the CLEC with a loop of equal quality and functionality as the ILEC's loop.

16 Contends that CLECs should be allowed to collocate DSLAMs at the remote terminal. ILECs should be allowed to set security requirements.

17 Concurs with FCC's decision to decline requests for large-scale changes in LATA boundaries. In the event RBOCs file for boundary waivers, the FCC should require detailed information. FCC should review waiver requests on a case-by-case basis. State commission should be given an opportunity to comment in waiver proceedings.

23. INDIANA UTILITY REGULATORY COMMISSION AND STAFF OF THE PUBLIC SERVICE COMMISSION OF WISCONSIN

5 In a rulemaking under section 706, the FCC should take note of each state commission's actions to encourage infrastructure investment under the Act and actions to address the same issues raised in the petitions. Believe that the Act calls State/Federal cooperation in the effort to achieve the goals of the Act for advanced telecommunications capabilities.

6 Indiana's experience with the relationship between Ameritech Indiana, an ILEC, and Ameritech Advanced Data Services of Indiana, its advanced services affiliate, concerns the IURC because the rules in the NPRM may not prevent the two carries from collaborating to stifle competition. [Discusses arbitration with Intermedia concerning frame relay in which the relationship between Ameritech Indiana and

AADS was an issue—i.e., AADS owns frame relay switches, and purchases frame relay service from the parent.] IURC believes that this type of byzantine relationship may slow the deployment of advanced telecommunications services.

7-8 One way to prevent anticompetitive arrangements between an ILEC and its affiliated advanced services provider is to require that a contract between the two parties is a public document.

9 The FCC's rejection of Ameritech Michigan's 271 application raises concerns about Ameritech's compliance with requirements for structural separation of its LECs and affiliates. These concerns equally apply to structural separation of RBOC LECs and advanced services affiliates. Trust that the FCC would undertake a similar analysis before granting any RBOC advanced services affiliate non-ILEC status.

11 Concerned that the ability of RBOCs to form new, unregulated affiliates will lead to disinvestment in the public switched network. Believe that the regulatory regime proposed by the FCC provides RBOCs with an incentive to shift their most lucrative customers to packet-switched networks provided by an advanced services affiliate. Such transfer of customers from the RBOC local exchange carrier to the advanced services affiliate could have a negative impact on public policy, including universal service funding.

11 Investment by an affiliate in packet-switching capability can have other serious implications for the public switched network. E.g., if packet-switching elements are under the control of the advanced services affiliate, the basic signaling functions of the public switched network will be controlled by a nonregulated affiliate, who can charge any price for SS7.

12 According to the NPRM, advanced services affiliate will not be subject to Section 251(c) of the Act, so the FCC and the states will lose their ability to regulate the prices at which affiliates offer services and network elements to other carriers. As a result, federal and state regulators will lose their ability to enforce the "just, reasonable and affordable" standard of Section 254(b)(1) and the "reasonably comparable" standard of Section 254*b)(3) of the Act as they apply to the "retail" advanced telecommunications services offered by those carriers and which utilize the services and network elements of the RBOC advanced services affiliate as inputs.

13 FCC's reliance on a market-based approach to accelerate deployment of broadband services, pursuant to Section 706, appears to supercede the universal service objectives contained in Section 254, Believe that section 706 should be applied AFTER advanced services are considered in relation to the definition of universal service, and only if the scope of deployment is unsatisfactory to the FCC and the States based on the results of the Section 707 NOI.

14 Interconnection requirements of Sections 251(a) and 251(b)—which are the only interconnection requirements faced by an advanced services affiliate—may not

ensure ubiquitous network interconnectivity because of economic and structural barriers.

14 Believe that additional unbundling requirements should apply if an RBOC advanced services affiliate offers its services in conjunction with an RBOC information service.

15 Providing RBOCs the authority to offer broadband capability through an Affiliate could create new monopoly power. Believe that RBOC affiliates may have a competitive advantage in the provision of advanced services, which may already be deterring competitors from entering the market. RBOC advanced services affiliates may already have significant financial and technological assets at their disposal so it may not be necessary for an RBOC to transfer a great deal of assets from its LEC to an affiliate. Therefore, allowing RBOCs to offer broadband services exclusively through an affiliate might actually strengthen the market power of the affiliate rather than promote competition.

15 If FCC proceeds with implementation of NPRM, the FCC should undertake a rulemaking to adopt standards for when and how section 251(h)(2) of the Act could be applied to an advanced services affiliate.

16 Regulatory regime proposed could serve as a de facto preemption of state authority to recover the cost of the local loop, 75 percent of which is under the jurisdiction of state commissions. It may also preempt state effort to require advanced services capability to all state residents.

16 FCC should recognize that state commissions view xDSL and other broadband technologies that rely on the existing copper loop as enhancements to the loop itself, not separate services. Therefore, the FCC's proposed rules allowing RBOCs to offer broadband capability such as xDSL through an affiliate could have serious implications on how the cost of the loop is recovered, and by extension, local rates.

24. INTERMEDIA COMMUNICATIONS INC.

4-5 Intermedia asks that the Commission not limit its definition of advanced services to those provisioned over wireline technologies.... [I]t is likely that wireless and wireline technologies will increasingly be used within the same network to provision different legs of the same service.... Tot the extent that the Commission will use this proceeding to craft rules and policies that make interconnection less costly and restrictive, these rules and policies should be available to all carriers.

6-7 Intermedia cautiously supports the Commission's tentative conclusion that ILECs should be able to establish structurally separate advanced services affiliate that will be deemed nondominant and will not be subject to the most stringent interconnection provisions of § 251(c) of the Act.... Nevertheless, ... substantial modifications are necessary if the Commission's rules are to be effective in preventing anticompetitive behavior.

7 [I]t is import to note that many state regulatory commissions do not have authority to regulate the activities of an ILEC's affiliates or subsidiaries.

8 Intermedia requests that the Commission take the following action:

- establish that the "rocket docket" complaint process will be made available to hear complaints involving alleged violations of the Commissions' separate affiliate rules
- specify that affiliates found to be obtaining services from the ILEC on a preferential basis will be prohibited from offering new services for a period of at least six months
- specify that, for ILECs that use services or facilities from affiliates to provide advanced services, violation of the separate affiliate rules will result in a suspension of providing new advanced services for a period of at least six months
- impose fines that will automatically apply upon a finding of violation of the affiliate rules

9 It is imperative that the Commission also scrutinize instances in which the ILEC purchases service or facilities from its affiliate.

9 Intermedia strongly supports the Commission's conclusion that, in order to operate independently from the ILEC, the affiliate may not own switching equipment, land or buildings in common with the ILEC, and that the ILEC may not perform installation, maintenance or operations for the affiliate outside of standard practices established in tariffs or published interconnection agreements.

9 Intermedia also supports the Commission's conclusion that all transactions between ILEC and affiliate must be at arm's length, nondiscriminatory, and in writing.

10 In addition, the Commission correctly concludes that ILECs may not extend credit to their affiliates. As part of this restriction, the Commission should expressly find that affiliates may not place orders for network equipment through the ILEC, even if they pay for it separately.

11 Intermedia agrees with the Commission's classification of an "affiliate" as an entity that truly operates independently from the ILEC, and an "assign" as an entity that effectively "occupies a position in the exchange market" similar to the ILEC. For this distinction to have meaning, the ILEC must be prohibited from transferring essential network facilities to its affiliate. Intermedia strongly supports the Commission's tentative conclusion to prohibit transfers of local loops to the affiliate.

12 [A]ffiliates should be prohibited from branding their services with the ILEC's name,

and joint marketing by parent and affiliate should be disallowed. Fund transfers and transfers of CPNI between ILEC and affiliate should similarly be strictly prohibited.

13 Structural separations rules should apply to small independent ILECs.

14 If and when the Commission finds ILECs to be nondominant in their local markets, the Commission will eliminate many of its regulations, as it has in the interexchange services market. At such time, the Commission may decide to eliminate the affiliate structure and transaction rules. Prior to the time the Commission may make such a determination, however, there is no basis for terminating these rules. The establishment of a sunset date would constitute an arbitrary and capricious termination of essential competitive safeguards.

14-15 [I]t is imperative that the Commission assure compliance with the rules it is devising to protect CLECs against anticompetitive conduct between ILECs and their affiliates. To do so, the Commission should make clear that violations of the affiliate structure and transaction rules will be met with a substantial fine, as well as an award of damages to any CLEC that has been harmed by such violations.

16 The Commission's proposed rules regarding affiliate structure and transfers suffer from one fundamental flaw – they regulate only "one-way" transfers in which the affiliate purchases services or facilities from the ILEC. Yet Commission precedent and Intermedia's recent experience make clear that transfers in which the ILEC purchases goods or services from the affiliate must equally be subject to scrutiny.

19 Intermedia posits that the Commission could eliminate most of these concerns by ruling that ILECs may not provide the same advanced services that their advanced service affiliates provide.

20 Intermedia strongly supports the Commission's establishment of national collocation standards in order to ensure that CLECs have reasonable and nondiscriminatory access to ILEC advanced services and network elements.

20 The enormous cost of physically collocating at every ILEC end office and tandem within a service area makes it cost prohibitive to serve any but the large-volume customers, and effectively prevents CLECs from using UNEs made available by state commissions to provide ubiquitous service to the mass market.

21 Intermedia agrees with the Commission's conclusion that it should exercise its authority under § 251(c)(3) to adopt national minimum collocation standards for nondiscriminatory collocation arrangements. Furthermore, Intermedia submits that the Commission should concurrently exercise its authority under §§ 201 and 202 of the Act to establish cost-based rates for the collocation arrangements which it adopts as national standards.

22 [T]he Commission should clarify that disputes between ILECs and competitors

regarding collocation arrangements can be resolved in the FCC's new "rocket docket" process which was recently implemented by the Commission as part of the amendment of the Commission's rules regarding procedures to be followed in filing complaints against common carriers.

24 As part of the Bell Atlantic-New York ("BANY") § 271 proceeding before the New York Public Service Commission ("NYPSC"), BANY has committed to provide an attractive alternative to physical collocation known as the Enhanced Extended Link ("EEL"). Under the EEL, the ILEC provides the unbundled loop in conjunction with central office multiplexing and transport to a CLEC's collocation node in another central office or to another point of presence.

25 To preserve available collocation space and to ensure that exorbitant collocation costs are not a barrier to entry, Intermedia urges the Commission to make the EEL available in connection with its promulgation of national collocation standards.

26 Shared collocation arrangements will eliminate a significant barrier to collocation-based entry, and the Commission should adopt such arrangements as part of its national collocation standards.

27-28 As part of its national collocation standards, the Commission should adopt the *Texas Arbitration* approach, and clarify that CLECs have an unrestricted right to cross-connect their collocation arrangements within the same central office, including facilities located on different floors of the central office. Further, the Commission should clarify that in cross-connection arrangements, ILECs can not require collocators to purchase dedicated racking service.

29 Under the SWB Provisioning Intervals, negotiated by CLECs and SWB in the Texas 271 collaborative, SWB must provision collocation space in 35 business days. Intermedia urges the Commission to adopt this interval as part of its national collocation standards. Under the SWB Agreement, AT&T has the right to liquidated damages when provisioning intervals for collocation are missed. In addition, the TXPUC has adopted rules that allow CLECs to obtain liquidated damages from ILECs who miss provisioning intervals for collocation arrangements. Adoption of the Texas collocation intervals and liquidated damages provision will help break the ILEC stranglehold on competition by providing ILECs with an incentive to provide collocation arrangements in a timely manner, and provide CLECs with some recourse when intervals are missed.

31 Intermedia urges the Commission to adopt, as part of its national collocation standards, rules requiring ILECs to make available both forms of cageless collocation arrangements. In so doing, the Commission should clarify that CLECs will be permitted to hire an ILEC-approved contractor to install and perform routine maintenance on their collocated equipment without the ILEC imposing the added cost of a line of sight escort.

32 In response to the Commission's request for comment regarding whether CLECs should be allowed to collocate equipment that includes switching functionality, or whether other restrictions should be placed upon collocated equipment. Intermedia submits that the Commission must allow CLECs to collocate equipment that includes switching capability, and the Commission's collocation rules should expressly provide for the collocation in ILEC central offices of remote switching modules ("RSMs"), Digital Subscriber Line Access Multiplexers ("DSLAMs") and routers (which are packet-switching equipment).

33 The plain language of § 251(c)(6) of the Act authorizes the Commission to require the collocation of RSMs, DSLAMs and routers. Section 251(c)(6) requires ILECs to provide just, reasonable, and nondiscriminatory "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." As the Commission correctly points out in the *NPRM* "the pro-competitive provisions of the 1996 Act apply equally to advanced services and to circuit-switched voice services. Congress made clear that the Act is technologically neutral and is designed to ensure competition in all communications markets."

36 Networks are continuing their march toward packet-switched technology, and technological convergence is on the horizon. Moreover, precluding the collocation of internet related equipment would, as stated above, violate the technologically neutral underpinnings of the Act. If the Commission's real goal is "to ensure competition in all communications markets," then the Commission should not preclude the collocation of all enhanced services equipment.

36 At the same time, Intermedia agrees that some limits on collocated equipment must be maintained in order to prevent space exhaust and to maximize available central office space. The Commission could address these concerns by precluding the collocation of databases rather than all enhanced services equipment.

37 Intermedia supports the Commission's tentative conclusion that all equipment placed on ILEC premises be compliant with NEBS safety standards. There is, however, no reason to require that equipment meet NEBS performance requirements.

37 With respect to the allocation of collocation space, Intermedia supports the Commission's conclusion that ILECs be required to offer collocation arrangements to CLECs on the same terms and at the same rates that ILECs offer such arrangements to their advanced services affiliates. This conclusion logically and necessarily follows from the Act's strictures against unreasonable discrimination.

37 Intermedia strongly supports the proposition that if an ILEC offers a particular collocation arrangement in one area, that arrangement should be presumptively considered to be technically feasible at all other ILEC offices.

39 Intermedia urges the Commission to clarify that collocated CLECs are free to perform

their won cross-connects between their equipment and the equipment of other CLECs without restrictions.

39 Intermedia strongly supports the Commission's conclusion that ILECs be required to offer alternative collocation arrangements, including shared cages housing multiple CLECs; small collocation cages (of less than 100 sq. ft.); and cageless collocation arrangements.

40 Virtual collocation puts CLECs at a great disadvantage by denying them access to the ability to provision, install, and maintain their own equipment, and thereby ensure the quality, integrity, and performance of their network. Obviously, virtual collocation is never a substitute for physical collocation, but the Commission can establish virtual collocation rules that begin to approximate the conditions of physical collocation.

41 Specifically, Intermedia urges the Commission to specifically allow CLECs to hire ILEC-approved contractors to combine UNEs in any virtual collocation arrangement, and further, the Commission should clarify that ILECs may not mandate the use of a security escort when the ILEC-approved contractor is performing provisioning, installation, maintenance, or repair work.

41-42 It is Intermedia's position that CLECs should be allowed to determine for themselves the type and cost of security they require for the equipment that they are physically collocating. To address security concerns in cageless physical collocation environments which house one or more CLECs in a separate area of the ILEC central office (*i.e.*, SCOPE in New York), Intermedia proposes the following security requirements: (1) CLEC, at their option, may install NEBS compliant cabinets on the portions of the racks they occupy; (2) the name of the collocating party must be clearly displayed in large block letters on both the front and back of the equipment locker; (3) the collocator must outline, using color-coded floor tape, the footprint associated with their equipment; (4) ingress and egress from the common collocation environment should be either electronically, or manually logged, as determined by the protocol in place at the particular ILEC central office; (5) collocators, at their option and in cooperation with the ILEC, should have the right to install and maintain video surveillance equipment within the common collocation area.

42-43 [T]he Commission should adopt the 35 business day provisioning intervals for collocation space agreed upon by CLECs and Southwestern Bell in the Texas collaborative.... Further, the Commission should adopt a provision to allow CLECs to obtain liquidated damages from ILECs who miss provisioning intervals.

43 Intermedia strongly supports the Commission's conclusion that ILECs that deny requests for physical collocation due to space limitations allow CLECs to tour the ILEC's premises.

43-44 Intermedia recommends that the Commission adopt minimum national standards for ILEC recovery of nonrecurring costs for collocation, including the conditioning of

central office space. ILECs typically recover all costs associated with the conditioning of collocation space from the first CLEC to collocate, even though the space has been conditioned to serve many future collocators. As the NYPSC has recognized, this practice is anti-competitive and constitutes a barrier to entry. Intermedia, therefore, urges the Commission to adopt a national standard based on the approach used in New York, where ILECs are precluded from recovering the entire cost space conditioning from the initial CLEC who occupies a portion of a collocation area. The NYPSC has ruled that BANY may charge the initial collocator no more than its *pro rata* share of space preparation costs.

44 Furthermore, the Commission should not allow ILECs to assess unnecessary and hidden charges against collocating CLECs, such as charges for engineering reviews.

45 In defining minimum standards, Intermedia urges the Commission to prohibit individual-case-basis ("ICB") or to-be-determined ("TBD") pricing of collocation. ICB and TBD prices can unduly raise the cost of collocation by including numerous hidden charges, and alternatively, can lead to price discrimination.

45 The Commission, through its existing definition of local loop, should adopt national minimum standards for unbundled loops that will ensure competitors the ability to provide advanced services.

46-47 Intermedia suggests that the Commission clarify that it is technically feasible to unbundle loops provisioned over digital loop carrier ("DLC") equipment and that the same provisioning interval should apply for unbundling "home run" copper loops and DLC loops.

47 Intermedia respectfully requests that the Commission define the extended link as a single UNE. The Commission is fully empowered to incorporate a series of discrete functions that are themselves defined as UNEs.

48 The Commission has clear legal authority to define UNEs by function, including an extended link UNE, and the Eighth Circuit Court of Appeals' recent *Shared Transport Decision* supports this view. In the *Shared Transport Decision*, the court noted that the statutory definition of network element expressly "includes both individual network facilities and the functions which those facilities provide, either ***individually or in consort***," and that, as presented, the shared transport UNE did not eliminate the distinction between unbundled access and resale.

49 An extended link UNE would maintain a clear distinction between unbundled access under § 251(c)(3) and resale under § 251(c)(4), as purchasers of extended links would provide their own switching. An extended link UNE would therefore meet the requirements of the plain language of the Act and recent federal appellate court case law. The Commission should feel confident that it has the authority – and the need – to define an extended link UNE for all telecommunications services, including advanced services.

49 The Commission should clarify that CLECs should have complete access to ILEC OSS databases that contain information on whether loops have been conditioned for provisioning advanced services.

50 [T]he Commission should clarify that an ILEC not impose nonrecurring charges on CLECs to determine if a loop is DSL capable unless similar nonrecurring charges are assessed on the ILEC's end user customers that order ADSL and other advanced services.

52 While Intermedia supports national standards, Intermedia opposes the suggested riparian rights approach to spectrum management. Under the riparian rights approach, existing users of loop spectrum essentially would have a right to prevent others from deploying technology that could cause interference. Rather than adopt a riparian rights approach, Intermedia submits that the Commission should convene a technical conference or similar collaborative process to explore the issues associated with spectrum management and develop an industry recommendation.

53 Intermedia supports maintaining the Commission's current broad definition of "unbundled loops," but the Commission should use this proceeding to clarify that, at a minimum, all ILECs must make available a core group of standard loops that are necessary to the provision of advanced services. Essentially, the Commission should require that all ILECs provide four basic forms of loops:

- Two-wire analog
- Two-wire digital
- Four-wire analog
- Four-wire digital

55 The confused and inconsistent variety of digital loops made available by the different ILECs illustrates the compelling need for the Commission to establish national standards. In particular, Intermedia asks that the Commission use its authority to define UNEs to do the following:

1. Require all ILECs to offer, at a minimum, analog and digitally conditioned two- and four- wire loops.

2. Require that the costs of conditioning digitally-capable loops be recovered through a one-time nonrecurring charge. This will result in four basic loops, with the following pricing configuration:

    - two-wire analog, at recurring rates set by state regulator

    - two-wire digital, at analog recurring rate set by state regulator, plus a nonrecurring charge for conditioning that is set by state regulator, or in the absence of state action, by the Commission

- four-wire analog, at recurring rates set by state regulator

- four-wire digital, at analog recurring rates set by state regulator, plus nonrecurring charge for conditioning that is set by state regulator, or in the absence of state action, by the Commission

- Require ILECs to fully describe the circumstances in which they provide electronics with loops they define as 56 kbps, DS1, DS3, ADSL, HDSL, BRI ISDN or PRI ISDN. If electronics are not being provided with the loops, the ILECs should be prohibited from charging more than the basic two- or four-wire digital loop rate.

56 Intermedia submits that by requiring ILECs to provide unbundled loops – regardless of the remote device used – is the best means by which the Commission can encourage ILECs to deploy DLC and other remote equipment that is compatible with the ILECs' unbundling obligations.

57 Intermedia ... suggests that the Commission promulgate two options for ILECs to provide CLECs unbundled loops to customer locations served over IDLC equipment. First, the ILECs should have the option of de-multiplexing the IDLC feeder plant into discrete loops before entering the ILEC switch. Because this is a network engineering choice for the ILECs, they should not be allowed to increase their loop rates if they choose this option. Second, the ILECs should have the option of permitting CLECs to pick up loops on the trunk side of the switch. Here, the ILEC switch would act as a multiplexer – no switching functionality would be provided – and thus, under this option, the Commission should expressly state that ILECs may not charge for unbundled switching, when loops are provisioned in this way.

58 Intermedia supports the Commission's tentative conclusion that CLECs should have access to sub-loop elements through collocating in controlled environmental vaults and equipment huts. Intermedia suggests that access to physical collocation space in these remote terminals should be made available on a first-come, first served basis.[1] In the case of space exhaust, virtual collocation should be made available, as is the case for central office collocation.

58 The Commission also should expressly state that ILECs must provide CLECs with nondiscriminatory access to ILEC rights-of-way for CLECs establishing their own facilities next to remote terminals. As local exchange carriers, ILECs are required to provide such access pursuant to other telecommunications providers pursuant to § 224 of the Act, and Intermedia requests that the Commission clarify this ILEC

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1 Intermedia believes that ILEC advanced service affiliates should be precluded from collocating at remote terminals. In cases where collocation space is inherently limited – as in remote terminals – the ILEC affiliate could easily occupy most available space under a "first come, first served" system.

obligation to avoid any uncertainty.

59 [T]he Commission should not permit ILECs to place any restrictions on the ability of CLECs to cross-connect to ILEC remote terminals for the purpose of interconnection, collocation, or access to sub-loop elements.

59 Intermedia submits that packet switching capability may indeed be unbundled. In fact, in its arbitration with Ameritech, Intermedia demonstrated that frame relay switches are capable of being unbundled for purposes of obtaining interconnection.

60 Intermedia strongly supports the Commission's tentative conclusion that advanced services provided to end users are subject to resale just like any other telecommunications service.[2] The plain language of the Act states that the ILECs' § 251(c)(4) resale obligation extends to "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Thus, the Commission's tentative conclusion clearly comports with the Act. The Commission should similarly extend ILEC resale obligations to access services that are purchased by end users.

61 Requiring ILECs to resell all services supplied to end users – including advanced services and access services – is not only required by the plain terms of the Act, but also will actually speed ILEC capital recovery and reduce ILEC investment risk.

62 Intermedia strongly supports the Commission's conclusion that § 251(c)(3) requires ILECs to provide unbundled loops capable of transporting high-speed digital signals, such that CLECs will be able to provide advanced services over UNEs. Intermedia does, however, request that the Commission reiterate that telecommunications service providers may purchase UNEs to provide any telecommunications service, including dedicated services and access services, and that any effort to restrict a telecommunications provider's access to UNEs violates the plain language of § 251(c) and the Commission's implementing rules.

64 In the *NPRM*, the Commission requests comment on its authority to grant limited interLATA relief by either modifying LATA boundaries pursuant to § 3(25)(B) or by classifying a service as "incidental" pursuant to § 271(b)(3) of the Act. Intermedia submits that while each of these provisions gives the Commission limited authority over LATA boundaries, this authority is to be narrowly construed and should not permit a Bell operating company ("BOC") to end-run its 271(c) obligations, which outline what a BOC must do prior to providing in-region interLATA services, including advanced services.

65 Intermedia cautions the Commission that the plain language of § 3(25)(B) permits the Commission to "modify" – not eviscerate –LATA boundaries. As the Supreme Court

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2 *NPRM* at ¶¶ 188-89.

has noted, the Commission's authority to "modify" portions of the Communications Act means "moderate change" and not "basic and fundamental changes in the scheme created by [statute]." The Commission's ability to modify a statutory requirement does not give the Commission license to embrace a "wholesale abandonment or elimination of a requirement."

67 Intermedia also notes that while § 271(g) permits the BOCs to provide "incidental interLATA services," § 271(h) expressly states:

> Limitations. – The provisions of subsection (g) are intended to be narrowly construed.... The Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service rate payers or *competition* in any telecommunications market.

Thus, prior to approving a BOC provision of incidental interLATA service, Congress directed the Commission to evaluate the competitive effects of such a BOC service.

70 Intermedia suggests that the Commission should endorse a very strong, but potentially rebuttable, presumption that competitive forces will work to meet demand. As evidenced by the [record in Bell Atlantic-West Virginia "emergency petition"], markets work in rural areas too, and the Commission should be very, very skeptical of claims by monopolists that an expansion of their monopoly power is needed to satisfy the demands of consumers.

70 In any event, any attempt to carve out a limited interLATA restriction would be impossible to police and implement. Advanced services are used to provide a variety of services, from Internet access to POTS, and it would be impossible to determine if a BOC was in fact restricting itself to providing only the designated advanced services.

25. INTERNET SERVICE PROVIDERS' CONSORTIUM

2-5 Independent ISPs provide a vital pathway to advanced services and are a small-business success story in their own right.

6-8 Independent ISPs and ILECs compete for the same customers notwithstanding the competitive disparity, and ILECs have an incentive to exploit their monopoly control of the local loop to discriminate against independent ISPs.

8-10 Advanced services are telecommunications service. Under Computer III, BOC advanced services should be subject to open network architecture ("ONA") unbundling obligations.

10-14 An advanced services affiliate of an ILEC must be subject to the same Computer III

safeguards that its parent is. Safeguards are necessary because, whether the ILEC provides advanced services directly or through a retail affiliate, it will be a monopoly provider and can increase rates to independent ISPs. Alternatively, even in markets with alternative advanced services available from CLECs, the underlying monopoly ILEC's rates will set a pricing umbrella that will force CLECs also to charge non-competitive rates for advanced services to independent ISPs. The only way to ensure a properly competitive market for ISP services is to require that the ILEC affiliates unbundle advanced services and provide them to competing ISPs on nondiscriminatory terms.

14-16 The FCC should implement procedures to monitor ILEC compliance with ONA provisioning of advanced services, such as a streamlined, electronic-filing method, as an alternative to the Section 208 formal complaint process, for independent ISPs to register complaints against ILECs.

26. KEEP AMERICA CONNECTED, ET AL.

7 Concerned that the Commission's proposal to require ILECs to establish separate subsidiaries to deliver advanced services is, in effect, a mandate to create a whole new class of CLECs. This approach is problematic given that CLECs have been reluctant to deploy advanced telecommunications services except for high-end business users.

8 If the Commission believes a separate subsidiary is necessary, Commission should adopt the more flexible, competition-oriented model of employing nonstructural safeguards it established in the Computer III proceeding.

14 The approaches of AT&T, etc., to develop an Internet backbone in West Virginia are piecemeal, at best, and do not adequately address the needs of the state in the development of an advanced statewide communications network.

17 As long as interLATA restrictions keep new entrants out of the backbone market, the lack of competition will continue to discourage or limit new investments in backbone capacity. Also, the specific and targeted approach suggested by the Commission to provide advanced service to schools, rural areas, and targeted universities and health care providers will only cause more stratification between the haves and the have nots.

17 Requiring ILECs to sell advanced data services at mandated large discounts to competitors is not only an obvious disincentive to investment in advanced data services by the ILECs, but also to new facilities investments by their competitors.

18 Urge the Commission to (a) establish a more competition-oriented model for separate affiliate, e.g., Computer III model; (b) allow ILECs to deliver advanced data services over interLATA boundaries or, at the very minimum, be granted in-region interLATA relief; and (c) not require ILECs to sell advanced data services at mandated discounts

to competitors for purposes of resale.

27. MCI WORLDCOM, INC.

9 Commission lacks legal authority to allow ILECs to circumvent the Section 251© requirements by providing local services using advanced capabilities through separate affiliates.

9 It is settled that network elements that ILECs use to provide advanced services are subject to the unbundling requirements of Section 251(c)(3) and resale requirements of Section 251(c)(4). Commission's proposal would allow the ILECs to avoid these unbundling and resale requirements by shifting functions they otherwise would provide into a separate network affiliate.

10 Section 19(2) prohibits the Commission from forbearing, directly or indirectly, from enforcement of all the requirements of Section 251(c).

11 An affiliate providing advanced services should be subject to section 251(c) as a successor, assign and comparable carrier. An ILEC cannot escape 251(c) obligations by artificially shifting advanced functions to a separate affiliate under common ownership.

13 An advanced services affiliate of an ILEC must be deemed an "assign" of the ILEC if the ILEC transfers ownership to the affiliate of ANY network elements that must be provided on an unbundled basis pursuant to Section 251(c)(3) or uses any underlying equipment and facilities which the CLECs cannot use. Even a de minimis transfer of advanced services equipment and facilities from the ILEC to the affiliate makes the affiliate an assign of the ILEC.

13 Even if the ILEC did not transfer any assets to the affiliate on a de *minimis* basis, MCI contents that the affiliate would still be a successor and assign and a comparable carrier.

17-18 Evasion of Section 251(c) requirements through a separate affiliate would frustrate the procompetitive purposes of the 1996 Act.: (1) acceptance of the proposal would deny CLECs access to network elements and services on terms and conditions that permit them to bring competition to local markets faster; and (2) the separate affiliate approach would not prevent favoritism toward the separate affiliate.

19 The structure of the Act further provides support for the conclusion that Congress did not intend to allow ILECs to escape their duty to comply with the market-opening provisions of Section 251(c) by using a separate affiliate to provide services dependent on access to the ILEC networks. In Congress' judgment, the first step to competition in services now dependent on the ILEC bottleneck facilities is full implementation of Section 251(c), not creation of a separate affiliate.

22-24 Even if the Commission has discretion under Section 251(h) not to treat the advanced services affiliate as an ILEC, permitting an ILEC to establish an affiliate for the provision of advanced local services on a non-incumbent basis would have severe anticompetitive effects. E.g.; an ILEC could use such an affiliate to avoid its Section 251(c)(3) obligation to provide access to DSLAMs as a network element when failure to do so would impair CLECs' ability to provide competing services, because collocation was not available in a central office or remote terminal. Also, ILECs and their advanced affiliates can exploit the ILECs' bottleneck monopoly by using the affiliates as the vehicles to invest in new technology that supports advanced services, while the ILECs' standard services are allowed to degrade and become technological backwaters serving residential users and other CLECs.

27 In addition to the anticompetitive strategies above, the affiliate is also in the unique position of influencing the ILEC's choice of architecture and technology for the deployment of advanced telecommunications capabilities. Relationship between the ILEC and its affiliate creates a natural incentive to develop advanced infrastructure and services that the other CLECs are not in a position to provide or can only roll out more slowly because they do not have the benefit of the ILEC's updated information. There is also the issue of first mover advantage in the market.

31 Should the Commission incorrectly decide to adopt its ILEC advanced services affiliate proposal, such an affiliate must be structured to be as truly separate as possible. MCI does not believe that any wholly owned ILEC affiliate can ever be truly separate from the parent ILEC.

33 Test for determining that an affiliate is truly separate boils down to a simple question: does an independent CLEC have the same opportunity, under the same terms and conditions, to obtain from the ILEC the same access to infrastructure, services, personnel, and facilities as the wholly-owned affiliate? If the ILEC affiliate has any unique opportunities based on its relationship with the ILEC, and these opportunities are denied to CLECs, the affiliate has the advantage of superior footing in the market and thus cannot be deemed truly separate.

35 The Section 272 affiliate structure is inadequate to ensure creation of a truly separate ILEC advanced services affiliate. Section 272 was intended by Congress as a prophylactic measure applicable only AFTER the BOCs demonstrated that they had complied with all aspects of Section 271—i.e., Section 271 was intended to apply only after local competition had developed in the BOC's market.

37-43 The separation and nondiscrimination requirements in the NPRM must be considered more stringent than those contained in the earlier Non-Accounting Safeguards Order. In order to protect consumers and promote competition, the division between ILEC and its affiliate must be complete and all-encompassing. In all cases, this separation should extend to the parent company and all other ILEC affiliates. It is critical that the ILEC and its data affiliate not be allowed to operate in concertn.

- ILEC and its affiliate must not be allowed to engage in joint marketing or advertising.

- ILEC and its affiliate must not be allowed to share any support or administrative services or expenses.

- ILEC and its affiliate must not share research and development, joint equipment design or development, or intellectual property.

- ILEC and affiliate must not engage in joint hiring or training on each other's behalf.

- ILEC and affiliate must not be allowed to use any commonly or jointly leased or owned physical space, land, buildings, facilities, equipment, or switches.

- Commission should require the ILECs to spin off the affiliate completely.

- ILEC affiliate must not be allowed to use the ILEC's corporate name, doing business name, brand name, logo, trademark, or service marks.

- There should be no transfer of ILEC local exchange customers/accounts to the affiliate, and not transfer of advanced services customers from the affiliate to the ILEC.

- ILECs must not be permitted to transfer any ILEC equipment or facilities to the affiliate.

- Affiliate must not be able to take all available space in the ILEC central office.

- Affiliate must not have any preferential access to ILEC rights of way, conduits or ducts.

- Affiliate must correctly impute all ILEC expenses, such as access charges.

- If the ILEC and its affiliate engage in joint billing and collection, the same arrangements must be offered to independent CLECs.

43 Urges the Commission to implement detailed, stringent rules for all affiliate transactions to ensure that they are (1) arm's length and nondiscriminatory, (2) with appropriate compensation and charges, (3) in writing, and (4) available for public inspection.

44 ILECs cannot be allowed to purchase telecommunications services from the affiliate (e.g., DSL service), and then resell those services to the public free from Section 251 obligations.

44	Affiliate must use the same OSS as other CLECs.
44	Affiliate should not receive any direct funding from the ILEC or its corporate parent. Alternatively, Commission should establish a cap on the amount of money that the ILEC can provide to its affiliate.
45	Affiliate must be required to (1) keep and file separate financial statements, which must be maintained and signed by separate finance and accounting departments; (2) maintain its books so that they are auditable in accordance with GAAP; and (3) submit to annual audits and reporting requirements.
45	Affiliate must have not only separate officers, directors, and employees, but also a completely separate board of directors, CEO, FSO, and operation personnel.
46	Believes that (1) the ILEC must not be able to secure a line of credit for the benefit of the affiliate; (2) the affiliate must not be allowed to assign its debt to its ILEC parent; and (3) ILEC must not sign any contract on behalf of the affiliate that would result in the ILEC having any direct or indirect responsibility for the affiliate's financial obligations.
47	ILEC may not discriminate in any way concerning "goods, services, facilities and information," and establishment of standards.
48	Any network elements, facilities, interfaces, and systems purchased by the ILEC must be made available to competitors. ILEC affiliates must undertake the same negotiations and arbitration process as the CLECs pursuant to Section 252, to obtain those rights under Section 251(c).
48-52	The list of separation requirements must be expanded significantly beyond that contained in the Non-Accounting Safeguards Order: (1) ILEC must submit operating plans prior to FCC approval; (2) the ILEC can only provide "advanced telecommunications service"; (3) the affiliate must allow equal access to competing ISP's services; (4) the ILEC must file performance and quality of service reports; (5) there should be no sunset date at this time.
52	Disagrees that an advanced services affiliate providing interstate exchange access services should be presumed to be nondominant, and thus exempt from interstate pricing regulations and tariffing requirements. Rather, Commission should require each affiliate, on a case-by-case basis, to demonstrate first that it meets every aspect of the Commission's "truly separate" and nondominance criteria.
53	Any transfers of assets between an ILEC and its advanced services affiliate must be tightly regulated, if not forbidden outright. Believes that an affiliate wholly owned by the ILEC essentially becomes the "data" ILEC in that region, and thus should be treated as a successor or assign of the ILEC.

53-55 Believes that a wholly owned ILEC affiliate should be deemed an assign of the ILEC in ANY instance where it receives facilities, is able to use ILEC infrastructure or obtain services from the ILEC not available to CLECs from the ILEC. There should not be a de minimis exception for limited transfers of equipment. If de minimis exception is adopted, the cost of any equipment transfer should be imputed to the affiliate to ensure that the affiliate and CLECs are on equal footing. De minimis exception, if allowed, must no be applicable to a transfer of any ILEC-purchased equipment, even if it has not been installed.

56 If transfer of equipment is allowed, such transfers should not be exempt from the strict nondiscrimination requirements—ILEC must offer such equipment on a nondiscriminatory basis to all entities.

56 Any other transfer of assets or resources between an ILEC and its affiliate should make the affiliate an assign of the ILEC—including transfers of customer accounts, employees, brand names, and OSS functionalities.

57 Commission should adopt additional collocation requirements to ensure that all entities have an opportunity to compete.

60 Supports Commission's efforts to regulate the terms and conditions of access to UNEs, and thus, to adopt stringent and meaningful national, minimum requirements for collocation.

60-62 Commission must clarify that all equipment necessary to provide local services, advanced or traditional, may be collocated. Commission must clarify that CLECs are permitted to collocate any equipment that the affiliate is permitted to collocate, whether it is a separate subsidiary or an ILEC ISP affiliate. Advanced services affiliate should not be permitted to collocate its switching equipment if there is only room at the CO for one additional carrier. Commission should require ILECs to list equipment that complies with the NEBS-1 or equivalent standard.

63-64 Commission should clarify that CLECs are permitted to collocate equipment in remote terminals. Commission must make clear that the ILEC must unbundle DSLAM itself. Commission should not impose size restrictions on equipment. Commission should consider the establishment of a third-party administrator to implement the Commission's national standards, develop rules and reporting requirements, resolve disputes between parties and enforce the collocation regulations.

65 Commission should require ILECs to provide a series of options for collocation, including physical, virtual, and cageless collocation. CLECs should be permitted to chose the option that best suits their implementation needs and cost constraints.

66 Allowing CLECs to physically access their own equipment would facilitate the use of

virtual collocation for the provision of advanced services.

66 Agrees tat any virtual collocation arrangements the ILEC provides to its data or ISP affiliate should be offered to CLECs on the same terms and conditions.

66-67 ILECs should not be permitted to unilaterally impose unjustified and costly security measures to deter CLECs seeking access to their equipment. ILECs should not be allowed to require escorts for CLEC technicians.

68 CLECs should be permitted to pay the costs for collocation on an installment basis. Commission should clarify that ILECs must allow CLECs to collocate equipment in an area that is already air-conditioned if such space exists, installed of an area where it must be installed.

68 Commission should establish presumption that if the ILEC offers a particular collocation arrangement, such arrangement should be presumed to be technically feasible at other similarly situated ILEC premises.

69 When an ILEC denies a request for collocation due to space limitations, it should not only substantiate its claims with the state commission, it should be require to include detailed floor plans and allow competing providers and state regulators to tour the premises to confirm the lack of space.

71 Commission should make clear that ILECs must work with CLECs and the standards bodies to develop an electronic OSS that enables competitors to determine whether the loop is capable of supporting DSL equipment. CLECs should be able to ascertain (1) whether the loop passes through a remote terminal, (2) whether it includes any attached electronics, (3) the condition and location of the loop, (4) loop length, and (5) electrical parameters of the loop.

72 FCC should make clear that ILECs must work with CLECs and the standards bodies to develop an electronic OSS that enables competitors to resolve spectrum management issues that arise in loop provisioning.

72 Commission should order the ILECs to perform a detailed inventory of existing loops—information should be included in databases accessible through nondiscriminatory preordering OSS.

74 MCI is a strong supporter of deployment of standards-based technologies and recognizes that the standards bodies (I1E1, ITU, ADSL Form) have and are currently developing standards tailored to the successful transmission of multiple DSL modem technologies within the same binder and within adjacent binders.

76 Recognizes that some ILECs, CLECs, and ISPs may not opt to deploy and support nonstandard technologies or configurations in their own networks. To that end, service providers that are using nonstandard technology should either be migrated to

standard technologies or prohibited from deploying nonstandard technologies until deployment guidelines are in effect.

78-83 Commission's current definition of the loop is insufficient to ensure that CLECs will have access to the loop functionality they need to offer advanced services. The following loop configurations should be made available as network elements:

- voice grade loops – traditional voice grade loop from the NID to the point at the CO where the loop connects to the switch; if the loop passes through a remote terminal, loop element would include the copper to the remote terminal, the remote terminal and any concentration or other electronics in use, and the fiber or copper from the remote terminal to the CO, and termination in the CO and appropriate cross-connection to other intraoffice facilities or equipment. Also includes various subloop elements (e.g., copper connection between the customer premises and the remote terminal), etc.

- xDSL capable loops – xDSL capable loops must be free of loading coils, and must be configured to avoid the interference problems that degrade xDSL transmission. Access to DSLAMs must be provided. If the loop is configured with a remote terminal, the CLEC must have the right to lease as a network element a connection back from the DSLAM at the remote to the CO or by some other location.

- xDSL-equipped loops – Commission must require ILECs, directly or through their local services affiliates, to unbundle and lease xDSL equipped loops, i.e., an element that includes the copper, the fiber and the electronics that make it possible for the loop to provide broadband services.

84 The appropriate elements to provide advanced services should include, at a minimum: xDSL-capable loops, xDSL equipped lops, xDSL equipped DLC loops, OSS< ATM switching facilities, xDSL electronics (including DSLAMs of any type and splitters), and dedicated and common transport. Commission should make clear the ILECs are obligated to provide the following subloop elements: feeder, distribution, and access to the remote terminal.

85 There is no need for Commission to revisit its procompetitive definition of "proprietary" and "impair" as those terms are used in Section 251(d)(2).

86-87 Recommends that the following network elements be defined, in addition to those elements already identified: voice grade loop, with and without DLC; xDSL-capable loop; xDSL-equipped loop; subloop elements (feeder, distribution, remote terminal); DSLAM; splitter; ATM switch; and shared interoffice data transport.

87 To the extent that advanced services are exchange access services, Section 251(c)(3) resale obligations should apply.

87 Commission should not consider interLATA advanced telecommunications

capabilities to be "incidental interLATA services" under Section 271(b)(3).

89 Commission is statutorily precluded from allowing the BOCs to provide interLATA advanced services unless and until the BOCs satisfy section 271.

89 Commission must not grant LATA boundary modification to the BOCs. LATA boundary modification is not necessary to provide rural areas with the same access to advanced capabilities as is available to other parts of the nation.

90 ILECs should not be granted LATA boundary modification that would permit them to carry packet-switched traffic across current LATA boundaries for the purpose of providing their subscribers with high-speed connections to nearby network access points.

91 InterLATA and LATA boundary relief not necessary for schools and libraries to receive access to advanced capabilities.

92 Commission must establish firm standards and rules with respect to LATA boundary modification. Bell Atlantic's West Virginia request is an example.

93 No Commission action in the form of interLATA relief for the BOCs is needed to facilitate the deployment of advanced telecommunications capabilities and services.

93-97 Commission should examine the advantages presented by the creation of an advanced capabilities third-party administrator funded by the members of the advanced services industry.

28. MCLEOD USA TELECOMMUNICATIONS SERVICES, INC.

2-4 The rule proposed in the NPRM regarding ILEC advanced service affiliates would create an "assign" of the ILEC rather than a truly "separate" entity. As the "assign" of an ILEC, the advanced services affiliate ought to be subject to the Section 251(c) resale and interconnection obligations. While limiting transfer of ILEC local loops and real property to the advanced services affiliate, however, the FCC's proposed rule would still allow an ILEC to assign all the equipment necessary to provide advanced services as well as valuable non-equipment assets, such as brand names, employees, customer accounts, and customer proprietary network information. To adopt a truly separate advanced services affiliate rule, the FCC should prohibit any transfer of property or benefit from an ILEC to its advanced service affiliate.

4-6 If the FCC adopts the proposal to allow an ILEC to offer advanced services through an advanced services affiliate not subject to Section 251(c)'s resale and interconnection obligations, then the FCC should impose structural safeguards on the ILEC-advanced service affiliate transactions, including: a prohibition on use of the ILEC parent's brand name by the advanced services affiliate, or joint billing or marketing of ILEC parent services and advanced services; requiring that any ILEC

equipment transferred to advanced services affiliates be made available on a nondiscriminatory basis to competitors. If a sunset provision is afforded to such ILEC safeguards, it should not be triggered until the ILEC is declared non-dominant.

6-8 The NPRM correctly concludes that the resale provisions of Section 251(c)(4) require that an ILEC must resell at wholesale rates any advanced services it markets to retail customers or Internet service providers, without regard to the ILEC's classification of the service as telephone exchange or exchange access service. Resale is a viable entry strategy that will facilitate competitive deployment of advanced services.

8-10 The FCC should adopt national standards requiring ILECs to allow competitors to collocate any type of telecommunications equipment used for voice or date transmissions, including equipment with switching capability, digital subscriber line access multiplexers ("DSLAMs") and remote access management equipment. The FCC should adopt its proposal to encourage collocation by requiring ILECs to offer collocation arrangements that reduce space needed by each provider and to provide CLECs with information regarding space availability. The FCC should require ILECs to provide any unbundled local loop arrangement required by a state commission, including conditioned loops, information sufficient to allow a CLEC to determine whether a loop can support xDSL, and sub-loop unbundling to allow the provision of advanced services through access at remote terminals.

10-11 The FCC should not adopt its proposal to modify LATA boundaries because it would permit BOCs to gain in-region interLATA entry prior to opening their local networks to competition and receiving a certification of interLATA entry as required by Section 271.

29. MINNESOTA DEPARTMENT OF PUBLIC SERVICE

4 Development of competition in the advanced services marketplace is the best means of speeding deployment of advanced services, as well as deployment of information services. Thus, any FCC rules relating to advanced services should enable and encourage competition in the advanced services marketplace.

4 Concerned that the FCC's proposals tip the balance in favor of the ILECs.

5 Most effective method of advancing competition in the advanced services marketplace is to allow states the flexibility to adopt additional requirements that address state-specific competitive circumstances.

5 FCC should deem any requirements that it adopts in this proceeding as a minimum beyond which state agencies can impose additional requirements as necessary to advance competition.

6 Any affiliate arrangement must ensure that an ILEC, its advanced services affiliate, and its information services affiliate cannot favor one another over competitors.

7 Experience demonstrates that ILEC affiliates will attempt to favor one another (i.e., an advanced services affiliate will attempt to discriminate against independent ISPs) [cites to situation where USW is giving its own information service affiliate preferential treatment over competing independent ISPs, which compelled the Attorney General to file a complaint against USW]. [Describes complaint in great detail.]

11-16 If the FCC allows ILECs to provide advanced services through affiliates not subject to ILEC regulation, then it should strengthen its proposed structural and nondiscrimination requirements.

- Urges the FCC not to exempt any advanced services ILEC affiliate from nondominant regulation, at least not for a transition period (e.g., tariffing).

- FCC should continue to require any BOC advanced services affiliate to offer competing ISPs nondiscriminatory access to telecommunications services utilized by the BOC information services.

- There must be some minimum procompetitive restraints on joint marketing among affiliates, which state regulators could build upon as necessary to encourage and protect competition (e.g., equal access standards)

16 Transfers of customer accounts and CPNI from an ILEC to its advanced services affiliate, as well as joint marketing, should make the advanced services affiliate an assign of the ILEC.

17 FCC should establish additional minimum collocation and loop requirements that states can supplement.

18 Strongly prefers that USW maintain the existing combinations of its network instead of using cageless collocation to provide combinations of UNEs to CLECs. Cageless collocation poses concerns regarding security, efficient use of space, and service quality. Insertion of SPOT frame into collocation process may result in less available space for collocation.

19 FCC should require a minimum level of unbundling of network elements, while leaving the states the authority to order further unbundling based on the needs of new entrants.

20 Opposes granting a BOC the authority to cross LATA boundaries before it meets the requirements set forth in Section 271. BOCs have not demonstrated that modification of LATA boundaries will improve rural access to the Internet.

21 If FCC decides to modify LATA boundaries, the FCC must deny requests for LATA modification unless the BOC demonstrates its commitment to specific rollouts of

service in the rural areas that are the basis of its request for modification. Requesting BOC must commit to a binding timetable for construction and operation of advanced services and facilities. Authority should be revoked if the BOC does not deliver.

30. MOULTRIE INDEPENDENT TELEPHONE COMPANY

2-3 Commission's proposed structural and nondiscrimination requirements should not be applied to rural ILECs. Requiring rural ILECs that provide advanced telecommunications services to high-cost, sparsely populated areas to do so through an advanced services affiliate subject to structural separations thwarts Congress' objective of providing advanced telecommunications services to ALL Americans, including those living and working in rural America.

4 Separate affiliate requirements proposed by Commission will prevent the deployment of advanced telecommunications services by rural telcos—rural telcos will be financially unable to deploy these services if they are forced to comply with separate affiliate requirements.

6-7 Commission's proposed regulations will create barriers to entry—Congress intended to eliminate these in Section 257. Proposed regulations will foreclose the participation of small rural telcos in the development, promotion and provision of advanced telecommunications services in rural America.

31. NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

2 "Alternative pathway" proposal and proposed additional rules should be rejected as contrary to public interest. Separate affiliate is not a realistic option for rural telephone companies.

2 NPRM is an example of FCC's attempt to over regulate the rural telecommunications industry.

3 Realities of small and rural ILECs need o be considered as the FCC determines how to proceed with its regulation of advanced services.

3 Compliance with Section 706 requires that the Commission use its powers to promote deployment of advanced services in rural areas, rather than create impossible barriers through structural separations requirements.

3 The proposed structural separations requirements will create substantial disincentives to deployment of advanced services by rural telephone companies.

4 Only practical method for rural telephone companies to continue to evolve their networks and fulfill the objectives of the 1996 Act is to build upon their existing

physical, human and financial resources. Hobson's choice to either duplicate these resources or incur all of the expenses and business risk for the benefit of competitors will inevitably discourage investment in the means to provide advanced services.

4 Rural companies that have lost their exemption from the unbundling requirements of Section 251(c) will be forced to subject their advanced services to unbundling requirements of Section 251(c) unless they comply with the proposed structural separations requirements.

5 Proposed structural separations requirements ignore the realities of small and rural telcos. Rural towns and communities do not have a large pool of qualified people from whom to choose separate officers or directors of an advanced services affiliate of their local telephone company, much less hire an entire separate staff.

5 Proposal that affiliate cannot obtain credit under any arrangement that would permit a creditor to have recourse to the ILEC's asset also ignores the realities of rural telephone companies. Credit will be difficult or impossible to obtain for an affiliate with no assets.

6 Separate affiliate requirement would be especially burdensome for rural telephone companies organized as cooperatives.

7-8 Commission should actively promote deployment of advanced services by removing regulatory barriers. E.g., rules that limit rural telephone companies' access to frequencies for wireless local loop applications, and the cross-ownership restrictions on rural telcos in the LMDS 1150 block.

8 Many of the proposed rules violate the deregulatory spirit and intention of the 1996 Act and are unnecessary.

8-9 FCC should abandon its proposed national standards for loop spectrum management—industry is not one-size-fits-all. Rural telcos need flexibility in order best serve their subscribers.

9 Technical upgrades to local loops to meet the proposed standards will increase loop costs and require even more Universal Service support, even where they may be little demand for high speed services

9-10 Rules dictating national standards for attachment of electronic equipment are unnecessary and will retard advanced services deployment. General problem with such a proposal is that in an industry as volatile as the telecommunications industry, standards will always lag behind technology.

10 Imposition of standards will delay the introduction of new and better technologies. FCC would be faced with arduous task of writing standards to encompass all of the permutations and combinations of attachment and resulting exceptions.

10 Attachment requirements are an issue best left to the states.

32. NEW YORK DEPARTMENT OF PUBLIC SERVICE

4 Although ILECs' incentives to deploy advanced services may be diminished by the Act's unbundling and resale requirements, there is a reasonable possibility that ILECs (choosing the separate advanced services affiliate option) will have an additional incentive to provide all CLECs reasonable access to their underlying basic local networks because the affiliate will also require such access.

6 During the transition to a fully competitive market, federal and state examination of affiliate transactions may be necessary to ensure that technology at the ILEC is not "frozen" while the unregulated affiliate reaps the economic rewards of advanced technology – technology that might later make the ILEC's circuit-switched network obsolete.

7 [W]e recommend that the Commission, along with the states, monitor ILEC marketing practices to ensure that ILECs do not use their local loop market power to require customers to purchase services from an advanced services affiliate in order to receive favorable treatment with respect to its other ILEC services. Such practices, if allowed, would thwart structural separation policies.

7 [A]ny joint marketing between the ILEC and the advanced services affiliate should be subject to the same joint marketing provisions applicable to the long distance affiliate.

8-9 We agree with the Commission's tentative conclusion that, subject to any de minimis exception, a wholesale transfer of facilities would make an affiliate an "assign" of the incumbent LEC and subject to 251(c) provisions. The NYDPS also concurs with the Commission's conclusion that a de minimis exception should apply only to ILEC transfers of facilities and equipment used specifically to provide advanced services.

9 Although we do not believe that additional national requirements are necessary, any rules adopted by the Commission should not interfere with additional state approved options.

10 [Bell Atlantic-New York] offered, in its § 271 Pre-filing Statement, to provide smaller cages, shared collocation, and new virtual collocation arrangements. Additional collocation arrangements are under consideration in a pending NYDPS proceeding. These options include:

1. Cageless Collocation,
2. Identified Space Collocation,
3. Virtual Collocation With Robot,
4. Assembly Room and Assembly Point, and
5. Recent Change Capability.

11-12 In the BANY-MCI interconnection agreement, the NYPSC concluded that BANY had not identified a roadblock that would prevent collocation of switching equipment.

12-13 With respect to the extent of local loop unbundling, the NYDPS has approved interconnection agreements that define various levels of loop unbundling by allowing for the purchase of four sub-loop components (loop feeder, loop concentrator/multiplexer, network interface device, and loop distribution) to the extent technically feasible in response to a specific request.

13 We see no need for additional national rules.

13 Although requiring loop unbundling might well facilitate the development of competition for advanced services, such action requires careful consideration of the potential impacts on the quality of telephone service and accountability for the service quality provided.

14 Since it is difficult to predict the impact of various levels of local loop unbundling will have on service quality, the states must maintain flexible policies and it is incumbent upon the Commission not to take action that will interfere with state monitoring.

14 The NYDPS supports regulator policies, such as giving ILECs the option of providing advanced services through a separate affiliate, designed to enable the growth of such competition [however] additional national unbundling and collocation rules ... are not necessary.

33. NEXTLINK

2 The use of a separate advanced services affiliate may assist the Commission in detecting anti-competitive behavior, but, as the Commission's prior experience demonstrates, it will not diminish the incentive for incumbent LECs to discriminate against competitors.

5 Throughout this proceeding, the incumbent LECs have argued that without regulatory relief they have little, if any, incentive to deploy advanced data telecommunications services. The Commission, however, cannot ignore contradictory record evidence that demonstrates the BOCs are either currently deploying or have announced plans to invest and deploy advanced telecommunications services throughout the nation.

6 [T]he Commission must ensure that there are meaningful restrictions on the sharing of information between the incumbent parent and the advanced services affiliate.

7 In order for an advanced services affiliate to be deemed separate, the Commission should prohibit incumbent LECs from providing any proprietary information (including CPNI and customer credit information) to the affiliate except upon terms

and conditions that have been previously agreed upon by other carriers.

9 Rather than creating a list of specific elements that are not permissible for an incumbent to transfer to its affiliate, the Commission should ask whether the transfer will degrade the incumbent LEC's existing network to the point that it would "impair the ability" of competitors seeking access to the incumbent LEC's network to provide telecommunications services.

10 Because of their ratepayer-funded economies of scale and scope, however, only the incumbent LECs can afford to locate a DSLAM in every central office. Incumbent LECs should not be permitted to transfer DSLAMs to their advanced services affiliates and thereby keep them from competitors who otherwise could obtain unbundled access to them under section 251(c)(3). ILECs have a continuing obligation to provide nondiscriminatory access to facilities, like DSLAMs, that the ILECs can deploy more efficiently because of their ratepayer-funded economies of scale and scope.

10 The Commission also should make clear that the advanced services affiliate must take the same OSS that the competitive LEC gets.

11 The Commission should require each incumbent LEC to submit a compliance plan that demonstrates how it will ensure that its advanced services affiliate truly will be separate.... The compliance plan and the reporting requirements adopted in New York's 271 proceeding provide a useful template.

11 Incumbent LECs should be required to tariff all aspects of their relationships with their advances services affiliates.... Given the [Eighth Circuit's] constraining interpretation of section 252(i), competitors would have to agree to all of the terms of a contract between the incumbent and its affiliate in order to get the same pricing or other conditions that the affiliate is getting.

12 NEXTLINK agrees that the adoption of uniform collocation standards would encourage the deployment of advanced services by increasing predictability and certainty and would facilitate the entry of competitors....

13 If the Commission adopts its proposal for separate advanced services affiliates, then the need for written collocation procedures and non-discrimination rules will be even greater so that competitors can ensure that they receive collocation on the same terms and conditions as the ILEC's advanced services affiliate.

13 [T]he FCC should require ILECs to provide quotes regarding the price and availability of collocation within ten to fifteen days, deliver standard collocation cages within 90 days, and provide conditioned space within 120 days. The Commission should also adopt self-enforcing penalties that trigger when an ILEC fails to comply with these performance intervals.

14 Today, incumbent LECs not only have the ability to deny access to central offices in order to warehouse space for their potential future needs, they can also impose specific "anti-warehousing" rules under which competitive LECs lose collocation space if they do not use their assigned space within a certain period of time (generally six months). The incumbent LEC's advanced services affiliate must also be held to the same standard.

15 NEXTLINK supports the Commission's proposal regarding premises tours to confirm that a central office has truly exhausted collocation space.

16 NEXTLINK has proposed that in circumstances where no space exists on an incumbent LEC's premises for physical collocation, NEXTLINK should be permitted to place its equipment in a nearby location and obtain interconnection with the incumbent LEC's central office as if it were physically collocated. This method of interconnection, which NEXTLINK refers to as "collocation via nearby location," provides NEXTLINK with continued physical control over its equipment and is NEXTLINK's preferred option where physical collocation is not available.

18 It is absolutely vital that competitive LECs like NEXTLINK receive detailed and timely information from incumbent LECs regarding the infrastructure they are deploying in the field.

19 The Commission should clarify that incumbent LECs must provision loops currently carried on IDLC through all technically feasible methods.

20-21 There are several options that NEXTLINK could use to gain access to IDLC-delivered loops. First, incumbent LECs could offer NEXTLINK access to the loop at the point where the copper loop is connected to the incumbent's IDLC facilities, which generally occurs at a frame somewhere between the incumbent's central office and the end user.... ILECs could also unbundle the switch port and provide access to the loop at that location, which avoids splitting the IDLC or removing the loop from the IDLC.... Incumbent LECs could also provide NEXTLINK with access to the digital side of the incumbent's IDLC equipment.... To the extent that it is technically feasible, an incumbent LEC could provide access to IDLC equipment in its central office through partitioning.

22 The Commission should require incumbent LECs to provide competitive LECs with access to loops served by remote switches.

24 The refusal of incumbent LECs to permit NEXTLINK to access unbundled loops served by remote switching units unless it collocates at the remote switch limits NEXTLINK's ability to compete. The Commission should therefore clarify that a competitive LEC does not need to collocate at a remote switch in order to gain access to unbundled loops served by the remote switch if the competitive LEC is collocated at the central office of the host switch for that remote switch.